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Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1943

TO THE

[illegible] CORPORATION OF THE
[illegible] OF UNITED STATES
PETITIONER

[illegible] COMPANY, ET AL.

ON [illegible] TO THE COURT OF

PETITION FILED [illegible], 1943.
CERTIORARI GRANTED [illegible], 1943.

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APPLICATION FOR ADJUDICATION IN CIVIL CONTEMPT.

Filed April 16, 1946.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, JACKSONVILLE DIVISION.

Civil Action File No. 209-J.

L. METCALFE WALLING, ADMINISTRATOR of the WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

versus

JACKSONVILLE PAPER COMPANY, a corporation; and DELIA CRAWFORD McGEHEE, RAY SUTTON McGEHEE, and C. C. McGEHEE, and M. R. McGEHEE and RAY SUTTON McGEHEE, as Trustees for ELLEN JOSEPHINE McGEHEE CAVERT, KATHLEEN MAE McGEHEE, THOMAS RIVES McGEHEE, CLIFFORD G. McGEHEE, JR., FRANK SUTTON McGEHEE, and BERRYLIN RAY McGEHEE, co-partners doing business as SOUTHERN INDUSTRIES COMPANY, and CLIFFORD G. McGEHEE,

Defendants.

I.

On July 8, 1940, Philip B. Fleming, petitioner's predecessor in office, as Administrator of the Wage and Hour Division, United States Department of Labor, filed his complaint in this Court against Clifford G McGehee, M. R. McGehee, and Clyde C. McGehee, co-partners doing busi-

ness as Southern Industries Company, and against Jacksonville Paper Company, a corporation organized and existing under the laws of the State of Florida, as defendants. The complaint was amended on March 25, 1941, by stipulation and with the consent of defendants, to name as parties defendants, Jacksonville Paper Company, a corporation; and Delia Crawford McGehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company, and Clifford G. McGehee.

II.

On April 22, 1941, the said cause came on to be tried by the Court without a jury; and on August 29, 1941, the Honorable Curtis L. Waller, Judge of said Court, entered final judgment of injunction. Said final judgment permanently enjoined the defendants, Delia Crawford McGehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company, and Clifford G. McGehee, their officers, agents, servants, employees, and attorneys, and all persons acting or claiming to act in their respective behalves and interest from violating certain provisions of the Fair Labor Standards Act of 1938 as therein specified. Said final judgment also permanently enjoined the defendant, Jacksonville Paper Company, a corporation, its officers, agents, servants, employees, and attorneys and all persons acting or claiming to act in its behalf and interest from violating any of the provisions of the said Fair Labor Standards

Act of 1938 as therein specified as to any of its employees engaged in commerce or in the production of goods for commerce employed at its main office and warehouse at Jacksonville, Florida, and at its following branches: Florida Paper Company, Jacksonville, Florida; Capitol Paper Company, Tallahassee, Florida; Pensacola Paper Company, Pensacola, Florida; Partin Paper Company, Mobile, Alabama; and Atlantic Paper Company, Savannah, Georgia. Said defendants, and each of them, since the entry of the aforesaid judgment, have had full knowledge of its contents and terms.

III.

Thereafter, on March 30, 1942, the United States Circuit Court of Appeals for the Fifth Circuit, during the pendency of an appeal and cross appeal to it from the said judgment, entered, on stipulation of the parties, an order substituting for Philip B. Fleming as Administrator of the said Wage and Hour Division, your petitioner, L. Metcalfe Walling, who had succeeded to said office.

IV.

Thereafter, on June 3, 1943, pursuant to the mandate of the United States Supreme Court, the Honorable Louie W. Strum, Judge of this Court, entered an amended and modified judgment against the defendants named in the caption hereto. As to the defendants named as co-partners doing business as Southern Industries Company and Clifford G. McGehee, the said judgment was modified only to specify with particularity the provisions of the Fair Labor Standards Act which said defendants were enjoined from violating. Similarly, the portion of the judgment enjoining the Jacksonville Paper Company from violations as to employees at its main office and warehouse at Jack-

sonville, Florida, and at its five branches named in paragraph II, was amended only to specify with particularity the provisions of the Fair Labor Standards Act which the said defendant was enjoined from violating.

In addition, said amended and modified judgment, pursuant to the mandate and the opinion of the Supreme Court of the United States, enjoined the Jacksonville Paper Company, its agents, servants, employees, attorneys, and all other persons acting or claiming to act in its behalf and interest from violating certain provisions of the Fair Labor Standards Act as therein specified as to its employees subject to said Act employed in its branches at Tampa, Florida; St. Petersburg, Florida; Lakeland, Florida; Orlando, Florida; Miami, Florida; West Palm Beach, Florida; and Macon, Georgia.

Said defendants, and each of them, since the entry of the aforesaid amended and modified judgment, have had full knowledge of its contents and terms.

V.

Among the terms of both of said judgments were provisions enjoining the said defendants from employing any of their employees, subject to the Fair Labor Standards Act as therein specified, for a workweek longer than 40 hours, unless such employee receive compensation for his employment in excess of 40 hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed. The said judgments also contained provisions enjoining the said defendants from mailing to make, keep, and preserve records of the persons employed by them and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the regulations of the Admin-

istrator, issued pursuant to Section 11(c) of the Act and known as Title 29, Chapter V, Code of Federal Regulations, Part 516.

VI.

Since August 29, 1941, defendants have engaged in certain payment practices and certain other acts, hereinaftermore particularly described, which your petitioner avers were not in conformity with the provisions of the decree herein entered on such date, and which since June 3, 1943, have not been in conformity with the provisions of the decree thereon entered, and which during said periods have been in violation thereof, and not in conformity with provisions of the Fair Labor Standards Act made applicable thereby. Your petitioner alleges that the violations of the said decrees are in derogation of his rights therein adjudicated and constitute contempt of this Court. In consequence of the said violations of each of the said decrees, the defendants, since August 29, 1941, have continuously underpaid the wages of many of their employees and have set at naught the rights and authority of the plaintiff, which said violations and their consequences may be cured only by the remedial action of this Court, including provision for the termination of the said continuing violations, and the payment by defendants of the wages underpaid to many of their employees as aforesaid, and such other conditions as to the Court may seem fit and proper that defendants may purge their contemptuous acts.

VII.

The payment practices and other acts of the defendant, Jacksonville Paper Company, which petitioner charges have violated the said final judgment of injunction dated

August 29, 1941, from said date to June 3, 1943, and which thereafter to the present have violated similar terms and provisions of the amended and modified final judgment of the injunction entered June 3, 1943, are as follows:

A

On or about April 27, 1940, said defendant inaugurated a payment plan as to many of its employees who had formerly been paid flat weekly salaries without additional compensation for overtime hours. Under said plan the said employees generally continued to receive the same amount of weekly compensation as before, with minor changes necessitated by arithmetical limitations, and they generally continued to work the same weekly schedule of hours. This result was accomplished by the defendant's setting up for each employee a purported hourly rate, which was arrived at by dividing into the regular weekly salary a number of hours orbitrarily selected by the defendant which was greater than the number the employee usually worked (generally in excess of 40) and by computing and entering on its payroll records compensation at the alleged hourly rate for the straight time hours and an additional half time for overtime compensation for the hours in excess of 40.

On or about August 1, 1940, the payment plan was amended and as so amended has continued in force and effect to the present time. The said amendment provided for the inclusion of a record or alleged account with each employee, in which the defendant accumulated each week the difference between the number of hours the employee had actually worked and the number which the defendant had arbitrarily selected as aforesaid to arrive at the alleged hourly rate. Since, as stated above,

the latter number was in excess of the number the employee normally and usually worked, a deficit generally resulted which was charged against the employee's account. In occasional weeks when employees worked beyond their normal schedule of hours and to the point that compensation therefor at the alleged hourly rates would exceed the regular weekly salaries, the employees were simply credited on their accumulated-hours account with the surplus hours. As the plan operated, therefore, defendant's employees subject thereto were consistently compensated at flat weekly salaries or agreed weekly compensations without receiving for hours worked in excess of 40, compensation at a rate not less than one and one-half times their regular rates of pay, as required by Section 7 of the Act.

Petitioner contends that the hourly rates arrived at as aforesaid were artificial and unreal; that such rates were not the regular rates at which the employees were employed; that the employees were in fact compensated regularly and normally at straight weekly salaries without overtime compensation; and that the regular rate of such employees could only be arrived at by dividing the total hours worked in each workweek into the regular weekly compensation.

Said plan was installed by said defendant in its home office and warehouse at Jacksonville; in its branches at Jacksonville, Tallahassee, and Pensacola, Florida; Mobile, Alabama, Savannah, Georgia; and possibly in other branches. On information and belief, petitioner charges that said defendant has continued said amended payment plan in effect down to the present date as to many of its salaried employees whose employment is subject to the Fair Labor Standards Act.

B

Sometime prior to June 3, 1943 (the exact date being unknown to your petitioner), said defendant inaugurated, and since then has continued in force and effect, in its home office and warehouse in Jacksonville and in most of its branches a bonus plan based on length of the employee's service and on the percentage of the employee's previous year's earnings. As the plan operated, the employee became entitled to the bonus payment after completing one year of employment, and the bonus was regularly paid monthly thereafter as a normal and regular part of the employee's compensation. During the employee's second year of employment, the bonus payments generally aggregated 15 per cent of the employee's annual earnings during his first year's employment, and thereafter such bonus payments aggregated generally 20 or 25 per cent of the preceding year's earnings. The monthly payments were 1 12 of the total bonus calculated as aforesaid, but they were not included by the defendant as a part of the employee's regular compensation on which the defendant paid overtime compensation. Petitioner charges that said plan does not comply with Section 7 of the Fair Labor Standards Act, as too many of the employees subject to said plan who have worked in excess of 40 hours in many workweeks since the plan was first inaugurated.

C.

In many workweeks since August 29, 1941, said defendant has employed the employees listed below in excess of 40 hours a week but has not compensated them for their overtime hours at one and one-half times their regular rates of pay as required by Section 7:

B. L. Fields, Thomas Passmore—Main office and warehouse, Jacksonville, Florida.

Pliny F. White—Florida Paper Company (Jacksonville branch).

J. H. Green—Capitol Paper Company (Tallahassee branch).

S. D. Robinson, Claud J. Jones—Pensacola Paper Company (Pensacola branch).

Margaret Oetgen—Atlantic Paper Company (Savannah branch).

Roy C. Butts—Macon Paper Company (Macon branch).

George Fairfield—Central Paper Company (Orlando branch).

Eugene Lallance—Lakeland Paper Company (Lakeland branch).

J. B. Dupree—Tampa Paper Company (Tampa branch).

Henry Fleck—Pinellas Paper Company (St. Petersburg branch).

F. L. Saunders, Paul L. Mitchell—East Coast Paper Company (West Palm Beach branch).

Said employees have been compensated at flat weekly salaries, and your petitioner understands and believes that defendant's contention is that said employees are exempt from the provisions of Section 7 of the Act because they are employed in an executive capacity within

the meaning of Section 13(a)(1) of the Act and of the Administrator's regulations issued pursuant thereto. Petioner is informed and believes, however, that said employees do not qualify for said exemption, either because they fail to receive the prescribed salary, because they spend in non-exempt work more than 20 per cent of the number of hours worked by non-exempt employees in the department under their direction, or because they fail to meet some one or more of the other conditions preseribed in the said regulations.

D.

At its Tampa and Orlando branches said defendant has since June 3, 1943, employed many of its employees, who are subject to the Fair Labor Standards Act, for more than 40 hours a week but has not compensated them for their overtime hours at one and one-half times their regular rates of pay, as required by Section 7. Said violation has resulted from the use of a plan identical to or closely resembling that described in the first paragraph under paragraph VII A, supra. However, defendant does not keep for its said employees in its Tampa and Orlando branches an accumulated-hours account. In fact, as alleged in paragraph E, infra, the defendant has recorded in many cases the scheduled or allowable hours under said plan and not the actual hours worked by the employees subject to the plan.

E.

Said defendant has failed to make, keep, and preserve records, as required by each of the aforesaid decrees, in the following particulars:

1. Since August 29, 1941, it has failed to keep a record of the daily and weekly hours worked by the employees listed in paragraph C, supra.

2. Since June 3, 1943, it has failed to keep an accurate record of the daily and weekly hours worked by its salaried employees at its Tampa and Orlando branches who are compensated under the plan described in paragraph D, supra, but it has recorded instead the arbitrary number of hours which was used for the purpose of establishing the alleged hourly rates of said employees.

F.

Said defendant has shipped, delivered, and sold in interstate commerce goods in the production of which it has employed employees in violation of Section 7 of the Fair Labor Standards Act, as alleged in the foregoing paragraphs, and in the production of which the individual defendants have employed employees in violation of Sections 6 and 7 of said Act, as alleged in paragraphs VIII, A, B, and C, infra.

Petitioner alleges that the issue under this paragraph turns on the question whether the payment practices of the defendants as alleged in paragraphs VII and VIII hereof constituted violations of Sections 6 or 7 of the Fair Labor Standards Act, prohibited by either of the aforesaid decrees.

VIII.

The payment practices and other acts of the defendants, Delia Crawford McGehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as trustees for Ellen Joseph McGehee Cavert,

Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company, and Clifford G. McGehee, which petitioner charges have violated the said final judgment of injunction dated August 29, 1941, from said date to June 3, 1943, and which thereafter to the present have violated similar terms and provisions of the amended and modified final judgment of injunction entered June 3, 1943, are as follows:

A.

Said defendants have employed Edward C. Klehm, C. C. Cantrell, and A. F. Wilberding for workweeks in excess of 40 hours a week but have not compensated them for their overtime hours at one and one-half times their regular rates of pay as required by Section 7. Said employees were compensated at flat weekly salaries plus a production or incentive bonus.

Your petitioner understands and believes that defendants' contention is that said employees are exempt from the provisions of Section 7 of the Act because they are employed in an executive capacity within the meaning of Section 13(a)(1) of the Act and of the Administrator's regulations issued pursuant thereto. Petitioner is informed and believes, however, that said employees do not qualify for said exemption because they spent in non-exempt work more than 20 per cent of the number of hours worked by non-exempt employees in the department under their direction or because they fail to meet some one or more of the other conditions prescribed in the said regulations.

B.

Your petitioner is informed and believes that it was the practice of said defendants to refuse to pay for work performed on a shift where an employee failed either to ring in or to ring out on the time clock at the beginning or end of the shift. This practice by the defendants resulted in violation of the minimum wage and overtime provisions of the Act in that employees were paid for less hours than those actually worked by them.

C.

Said defendants paid to a number of their pieceworkers straight time piece rates without additional compensation for overtime hours, although in many weeks such employees worked in excess of 40 hours.

Said defendants failed to make, keep, and preserve records in the following particulars:

1. Said defendants failed to keep a record of the daily and weekly hours worked by the employee listed in paragraph A, supra.

2. Said defendants failed to record the actual hours worked by some of their pieceworkers and some of their other production employees in instances where said employees failed to ring in or to ring out on the time clock at the beginning or end of periods when they were actually performing work.

E.

Said defendants have shipped, delivered, and sold in commerce and have shipped, delivered, and sold with knowledge that shipment or delivery or sale thereof in commerce is intended, goods in the production of which they employed employees in violation of Section 6 and Section 7 as alleged in paragraphs VIII, A, B, and C, supra.

Petitioner alleges that the issue under this paragraph turns on the question whether the payment practices of said defendants, as alleged in paragraphs A, B, and C hereof, constituted violations of Section 6 or 7 of the Fair Labor Standards Act, prohibited by each of the aforesaid decrees.

Wherefore, your petitioner prays:

1. That defendants' payment practices and other acts hereinabove alleged be adjudged in violation of the aforesaid judgments or decrees, and that the Court adjudge the defendants, and each of them, to have committed contempts of this Court; that defendants be required and compelled to obey the said judgments or decrees; that defendants be required and compelled to terminate their continuing violations and make payment of the amounts of unpaid wages due their affected employees; and that such other and further conditions be imposed as to the Court may seem fit and proper to preserve and enforce the rights of the plaintiff, and to purge the defendants of their contempts.

2. That the Court issue a rule to show cause, directed to said defendants, requiring them to be and appear before this Court at such time and place as the Court may

set, then and there to show cause if any they have why the prayers of this petition should not be granted.

WILLIAM S. TYSON,
Solicitor.
GEORGE A. DOWNING,
Regional Attorney.
JAMES H. SHELTON,
Senior Attorney.
United States Department
of Labor.

Post Office Address:
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Atlanta 3, Georgia,

or

Solicitor of Labor,
U. S. Department of Labor,
Washington 25, D. C.

State of Georgia,
County of Fulton.

Before me the undersigned authority, personally appeared Robert K. Miller, who, being by me first duly sworn, deposes and says that he is Supervising Inspector of the Atlanta Regional Office of the Wage and Hour and Public Contracts Divisions which comprises the States of Georgia, Florida, and South Carolina; that in his official capacity he directed and supervised the various inspections of the operations of the defendants named in the foregoing petition, as a result of which inspections there were reported the various payment practices and other acts described in the foregoing petition; that he has

read the foregoing petition, is familiar with the matters and things therein alleged, and avers that they are true to the best of his knowledge, information, and belief.

ROBERT K. MILLER.

Subscribed and sworn to before me this 12 day of April, 1946.

SYLVIA ELLISON,
Notary Public, Georgia,
State at Large.

(Seal)

My commission expires August 21, 1948.

Service of the foregoing application and order to show cause is hereby accepted on behalf of the individuals defendant, doing business as Southern Industries Company.

This April 16, 1946.

RAGLAND, KURZ & LAYTON,
By A. L. LAYTON,
Their Attorneys.

---

15 ORDER TO SHOW CAUSE.

Filed Apr. 16, 1946.

(Title Omitted.)

Upon consideration of the verified petition of L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, filed herein on March 28, 1946, in which it is alleged that certain pay-

ment practices and acts of the defendants are not in conformity with the judgments and decrees of this Court entered respectively on August 29, 1941, and June 3, 1943:

It Is Hereby Ordered, that the defendants, Jacksonville Paper Company, a corporation; and Delia Crawford McGehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, copartners doing business as Southern Industries Company; and Clifford G. McGehee, be and appear before this Court in the Federal Court room in the New Post Office Building in Jacksonville, Florida, on the 17th day of June, A. D., 1946, at 10:00 o'clock, A. M., or as soon thereafter as counsel may be heard, to show cause, if any they have, why the prayers of said petition should not be granted.

It Is Further Ordered, that the said defendants file their answers, responses, or returns to this order within 30 days of this date.

It Is Further Ordered, that copies of this order, together with copies of the petition, be served upon the defendants within 5 days of this date.

Done And Ordered at Jacksonville, Florida, this 16th day of April, A. D., 1946.

LOUIE W. STRUM,
United States District Judge.

ANSWER OF DEFENDANTS TO APPLICATION FOR ADJUDICATION IN CIVIL CONTEMPT.

17 Filed May 15, 1946.

(Title Omitted.)

Come now the defendants, Jacksonville Paper Company, a corporation, Delia Crawford McGehee, et al, as co-partners doing business as Southern Industries Company, and Clifford G. McGehee, and for answer to the application for adjudication in civil contempt filed herein and to the rule to show cause entered herein on the 16th day of April, 1946, these defendants say:

1. These defendants admit the allegations of paragraph I of said application.

2. These defendants admit the allegations of paragraph II of said application, but say that by the order and mandate of the Circuit Court of Appeals for the Fifth Circuit, the said judgment entered on August 29, 1941 was vacated and set aside.

3. These defendants admit the allegations of paragraph III of said application.

4. These defendants admit that on June 3, 1943 this Honorable Court entered an amended and modified judgment against the defendants and say that said amended and modified judgment is the best evidence of the terms thereof. These defendants admit that since the entry of said judgment they have had full knowledge of its contents and terms.

5. These defendants admit the allegations of paragraph V of said application.

6. These defendants deny the allegations of paragraph VI of said application and say that ever since the entry of said amended and modified judgment these defendants have complied therewith.

7. Answering paragraph VII (a), the defendant Jacksonville Paper Company admits that at its main office at Jacksonville and at its branches, Florida Paper Company in Jacksonville, Florida, and at its Mobile, Alabama, Pensacola, Florida, Tallahassee, Florida and Savannah, Georgia branches it adopted a cumulative wage plan which was applied originally to all office employees, warehouse employees, and warehousemen employed on an hourly basis in said several branches; that accurate records were kept of the hours worked, the amount paid, and in the event of payment in excess of the actual hours worked the balance of such over-payment was charged to the employee; and said defendant attaches hereto a copy of the form of record kept by it and makes the same a part hereof marked respectively exhibits 1, 2 and 3, being respectively the form of daily time sheet, weekly salary time sheet and cumulative hour record. Said defendant further says that it conferred with the office of the Administrator of the Wage and Hour Division at Jacksonville and that the plan so adopted by the defendant was approved as being in compliance with the rule laid down by the Supreme Court of the United States in the case of Walling, Administrator, vs. A. H. Belo, 316 U. S. 624. Defendant further says that in the month of November, 1943, the method of payment of all warehousemen at said branches was changed and thereafter said employees were paid on the basis of the actual number of hours worked as shown by the time sheet.

Except as herein admitted, these defendants deny the allegations of paragraph VII (a) of said application and

expressly aver that the method of payment adopted and now employed by it is in full compliance with the amended and modified judgment of this Court.

8. Answering paragraph VII (b), the defendant Jacksonville Paper Company admits that it adopted a bonus plan and that under said bonus plan it paid to certain of its employees a bonus based upon a percentage of the amount actually paid them for services during the preceding year or part thereof, but says that the said bonus plan was a mere gratuity which said defendant had the right to withdraw at any time, and furthermore that the said bonus plan, being calculated on the basis of the amounts actually paid to said employees during the preceding year or part thereof, included amounts paid to said employes as overtime and hence the said plan is in any event in full compliance with the amended and modified judgment of this Honorable Court. Except as expressly admitted herein, these defendants deny the allegations of said paragraph VII (b) of said application.

9. Answering paragraph VII (c) of said application the defendant Jacksonville Paper Company admits that it has employed the persons named in said paragraph VII (c) except B. L. Fields and Thomas Passmore, and has compensated them on a weekly salary basis, but says that each of said employees comes within the exemption to the provisions of the Wage and Hour law as an administrative or executive employee. Further answering said paragraph these defendants say that they are unable to more particularly answer the allegations thereof because the same are vague and indefinite and do not allege the particular manner in which said employees do not come within the definition of executive or administrative employees.

10. Answering paragraph VII (d) of said application the defendant Jacksonville Paper Company denies the allegations thereof and says that it keeps an actual record of the hours worked by its employees at the Tampa and Orlando branches, and that said employees are paid according to the actual hours worked and if in excess of forty hours, time and one-half of their regular hourly compensation is paid.

11. Answering paragraph VII (e) of said application the defendant Jacksonville Paper Company says that the employees listed in paragraph VII (c) are exempt from the overtime provisions of the Wage and Hour law in that said employees are bona fide executive or administrative employees, and says that it has at all times since June 3, 1943 kept accurate record of the daily and weekly hours worked by all of its employees at its Tampa and Orlando branches.

12. Answering paragraph VII (f) of said application the defendant Jacksonville Paper Company denies the allegations thereof.

13. Answering paragraph VIII (a) of said application the defendants Delia Crawford McGehee, et al., co-partners doing business as Southern Industries Company, and Clifford G. McGehee, say that the employees named in said paragraph are all bona fide executive or administrative employees within the terms of the statute and of the valid rules and regulations of the Administrator thereunder.

14. Answering paragraph VIII (b) of said application these defendants allege that in order to keep the records required by the Fair Labor Standards Act and the rules and regulations of the Administrator promul-

gated in pursuance thereof, these defendants installed a time clock system at their plant in the City of Jacksonville, Florida, and required all of their employees to check in and out on said time clock in order that an accurate record of the hours worked might be kept. These defendants further say that they have no means of knowing or checking the number of hours worked by an employee unless he complies with the rule adopted by the defendants and checks in and out on the time clock provided for that purpose; that on several occasions some of the employees of the defendants at said plant claimed to have worked for period of time in addition to those shown on the time clock record; that these defendants are unable to ascertain the truth of such allegations of their said employees and for that reason have refused to pay to said employees on the basis other than the time shown by said record. These defendants deny that such practice constitutes a violation of the Fair Labor Standards Act and particularly of the amended and modified judgment of their Court in said cause.

15. Answering paragraph VIII (e) of said application these defendants deny the allegations thereof and say that at the present time they do not have any employees operating on a piecework basis. Further answering, these defendants say that they are unable to answer more particularly the allegations of said paragraph VIII (c) in that the same are vague and indefinite and do not specify the names or method of operation of said piecework employees nor the times during which it is alleged that such practices existed.

16. Answering paragraph VIII (e) of said application these defendants deny the allegations thereof.

17. Answering paragraph VIII (e) of said application these defendants deny the allegations thereof.

Subject to the foregoing answer, the defendants Jacksonville Paper Company, Delia Crawford McGehee, et al, co-partners doing business as Southern Industries Company, and the defendant Clifford G. McGehee, move the Court to dismiss the said application on the following grounds:

1. Said application is vague, indefinite and uncertain in its allegations, whereas in a contempt proceeding the defendant should be put on specific notice of alleged acts of contempt with which the defendant is charged so as to be able to specifically reply thereto.

2. It appears from the allegations of said application that the same is based on mere suspicions without knowledge of any specific facts which would authorize the Court to judge these defendants in contempt of its modified order and judgment.

Wherefore, these defendants pray to be hence dismissed and that the rule to show cause issued in said cause be discharged.

RAGLAND, KURZ &
LAYTON,
By L. KURZ,
Attorneys for Defendants.

608 Consolidated Building,
Jacksonville, Florida.

EXHIBIT No. 1.

Daily Time Sheet

Branch .....

Name	In A. M.	Signature	Out Noon	Signature	In Noon	Signature	Out P. M.	Signature	In	Ou
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Approved ..... Manager

Correct ..... Cashier

EXHIBIT No. 1

Daily Time Sheet

Date .....

M.	Signature	Out Noon	Signature	In Noon	Signature	Out P. M.	Signature	In	Out	After Hours Signature	Total
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..... Manager

Correct ..... Cashier .....

EXHIBIT No. 2.

Week Ending Saturday Night.

Branch ..... Weekly Summary Time Sheets. Week Ending.....

Name	Scheduled Hours	Record Number of Hours Worked							Total Hrs. Worked	Remarks:
		Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.		

EXHIBIT No. 3.

Name ..... Branch .....

	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					

(1M-4-10-45-L.)

26 Filed Sep. 3, 1946.

(Title Omitted.)

Transcript of proceedings had and testimony taken in the above-entitled cause before the Hon. Dozier A. DeVane, United States District Judge, without a jury, at Jacksonville, Florida, commencing at 10:00 o'clock A. M., June 17, 1946.

Appearances:

George A. Downing, Esq., Regional Attorney, James S. Shelton, Esq., Senior Attorney, on behalf of the Plaintiff.

Ragland, Kurz & Layton (by Louis Kurz, Esq.), on behalf of the Defendant.

The Court:

What is our case this morning?

Mr. Downing:

May it please the Court, this is a civil contempt proceeding brought by L. Metcalf Walling, Administrator of the Wage and Hour Division to obtain a constructive interpretation of certain practices of the defendant in which we allege they violated the terms of a decree entered in this Court in 1943.

Does your Honor wish an opening statement? There is a good deal of background.

The Court:

Before you make an opening statement I have to inquire if you gentlemen desire the Rule invoked in this case. Does the Government desire to invoke the rule as to witnesses?

Mr. Downing:
I think not, your Honor.

The Court:
Does counsel for defendant?

Mr. Kurz:
Yes.

The Court:
Then you will have to call your witnesses and have them sworn and send them out before you make your opening statement. Each party call their witnesses. The Government call their witnesses first.

Mr. Downing:
There are a great many witnesses which, by agreement with counsel, will be produced during the course of the trial. We do not wish to disrupt their business to call them all at once.

The Court:
Just see that they don't come into the Court Room while the trial is going on.

(All witnesses who were present were sworn.)

The Court:
Ladies and gentlemen, the Rule has been invoked in this case, which makes it necessary for you to remain outside of the Court Room while the case is being heard. You are not to talk to anybody while the case is going on other than the party that employed you as a witness. Particularly are you not to tell any other witnesses what transpired while you were in the Court Room. Please remain near the door so you can answer promptly as your names are called. Please retire from the Court Room.

Mr. Kurz:

Your Honor, there are a good many defendants and I think the Jacksonville Paper Company would like to have Mr. Reinoehl, who is auditor for the company, to be permitted to stay in the Court Room.

Mr. Downing:

And in turn, your Honor, we should like Mr. Carter.

The Court:

Now, you may proceed.

Mr. Downing:

Your Honor, before going into any opening statement I would like to explain that there are different depositions taken by stipulation around at the different branches around the State and outside of the State. They were taken on rather short notice and the Court reporter has not gotten those depositions to us. They may come in today by mail and we may be prepared to offer them tomorrow but I would like to explain that in the event they don't all come in before the oral testimony is concluded it may be necessary to offer them later.

The Court:

You mean you may not be in a position to conclude this case in this hearing?

Mr. Downing:

That is true, your Honor.

The Court:

All right.

Mr. Kurz:

If the Court please, I would like to make this statement at the outset that due to the fact that the Rule to

Show Cause does not charge with any great particularity any specific violations but rather charges violations of the Court's Order in general terms, it is a rather difficult process for the defendant to get in the testimony which may be produced as to specific violations. If the case is to be tried at this time we would like the privilege of adducing additional testimony.

The Court:

In answer to that, I will say that I will see and if the testimony and the facts justify you may have it. We will decide that when we get to it. I am going to insist on a full and complete hearing in the matter before the record is closed and submitted to me.

Mr. Downing:

Your Honor, as I said, this is a civil contempt proceeding, brought by the Administrator of the Wage and Hour Division, chiefly to obtain interpretations of the Court whether certain payments, processes of the defendant are in accordance with this Court's decree entered in accordance with the mandate of the Supreme Court and in compliance with the Wages and Hour Act.

This case originally went to the Supreme Court and which decided wholesalers were under the Wages and Hour Act.

Before discussing the case in detail I would like to point out that the organization involved here is the Jacksonville Paper Company, a corporation and its manufacturing affiliate, Southern Industries, which is a partnership proposition or at least the chief stockholders of the Jacksonville Paper Company. Jacksonville Paper Company is a distributing company. Southern Industries is a manufacturing concern, manufacturing a portion of the goods supplied through the Jacksonville Paper Company branches, to its customers. We will show roughly thirty-

two percent—you probably know in a general way—percentage of the goods which Southern Industries manufacture for the Jacksonville Paper Company.

Jacksonville Paper Company has about thirteen branches in three states at this time and some of that is interstate and some intrastate.

The interstate are those which sell directly in interstate commerce a substantial portion and those include the Florida Paper Company, Jacksonville, the Capitol Paper Company, Tallahassee, the Pensacola Paper Company, Pensacola, the Partin Paper Company at Mobile, and the Atlantic Paper Company, Savannah.

The intrastate branches are those which sell merely within the state and they are:

Macon Paper Company,
Tampa Paper Company, Tampa,
Lakeland Paper Company, Lakeland,
Central Paper Company, Orlando,
East Coast Paper Company, West Palm Beach,
Everglades Paper Company, Miami,
Daytona Paper Company, Daytona Beach.

In this proceeding we have not included certain branches, not because we do not consider they are under this coverage but we are not prepared to assert any substantial violation of the decree for those branches.

There is some question about the cashiers. In one case the cashier is gone and the man that preceded him is gone and we are not prepared to prove his duties sufficiently to charge.

We have left out Daytona because Daytona is a new branch, not included in the decree.

We have left out Miami because at Miami we are not prepared to show any substantial violation.

The original proceedings included all the branches except Daytona, which was new at the time we filed the suit, which was filed in July, 1940, on which we went before Judge Waller in April, 1941, and he handed down his judgment in August, 1941. This is his decree:

(Reading from decree.)

The situation here, then, your Honor, is substantially similar to those which we found in the Overstreet case. There the Court had decided on a motion to dismiss, I believe, that the defendant's business was covered. The employees were before you suing on it for their back wages. Your Honor held there that the Supreme Court had ruled, that the matter was pretty well decided and I think you will be convinced by the evidence here that the Jacksonville Paper Company is a similar case, your Honor.

The Court:

Let me ask you this question: Do you have employees interstate and intrastate?

Mr. Downing:

To some extent.

The Court:

It was not like the fish house case I had here, the cold storage company?

Mr. Downing:

Oh, no. Most of the employees, we shall contend, are covered, because we have knowledge that its scheme of commodities involve intrastate and interstate and for the most part we contend the defendant has not insulated its employees from coverage. They will contend otherwise.

In conclusion, the Supreme Court, Fifth Circuit, in its opinion—

(Legal argument.)

Mr. Kurz:

If the Court please, in so far as the opinion of the Supreme Court is concerned it must be borne in mind that the principal contention of the Administrator as to the original Jacksonville Paper Company case was that the mere fact that the goods were ordered from out of the State would place their entire operation and all the employees under the Wage and Hour coverage, under the Act.

Subsequently the Administrator threw in some other matters of minor importance but the Supreme Court opinion is very clear on this: That the Administrator failed to show that there was such a course of commerce from the out of state points to the ultimate consumer that all the transactions were in commerce. The Court held that when the goods reached Savannah they came to a state of rest and interstate commerce then ceased except as to such things as special orders for a particular customer or goods that were printed in the customer's name, which really came under the same classification of shipments which were ordered from the manufacturer to be shipped direct to the customer from an out of the State point.

The Supreme Court pointed out that it was the duties of the particular employees which was to be decisive on the question and not necessarily the course of business of the employer.

Of course, it was admitted that the interstate branches which are so classified have sold goods beyond the limits of the State in which they were located and the intra-state branches have sold only local customers within the

State, received a majority of their merchandise from a point of origin beyond the State in which they are located.

So, we come to the first approach to this question. What is the duty of the particular employee. The order of the Court, the decree of the Court, entered in this case on June 3, 1943, was to this effect:

That if any employee, either in the interstate branches or intrastate branches, devotes a substantial amount of his time to the handling of goods in commerce, which would include, as Mr. Dowling said, the handling of out of State shipments into the warehouse, the handling of these special orders, and things of that kind, then there is coverage and the defendants were enjoined from violating the provisions of the Act specified in the injunction.

I think this proceeding, being a proceeding in civil contempt, involves the question of whether there has been such a violation of the injunctive order.

I think, for instance, that the matter of these so-called discharged employees and re-employment under the accumulated hour plan was before the Court in the original case and there was no special ruling made condemning that practice nor was there any special ruling condemning the practice as set up, as to the accumulated hours plan, which I might, incidentally, say was pursuant to the regulations and the administrator recognized that the employer might adopt such a course. They called it the constant pay plan or the accumulated hour plan, and that is in their regulation, and if the employer wants to set up an hourly basis of employment and say to his employees: "Now, we will pay you so much an hour for your first forty hours or thirty hours and time and a half for overtime, but we will figure on the minimum, on the average of fifty dollars a week and we will pay you fifty dollars a week but we will not pay a royalty on the hours if during the week you work less than fifty. We will

credit it on what we might call an hour bank account the time you work more than fifty hours during any week." That is what was done here and there was testimony to that effect in the original proceeding. The Court did not especially enjoin that practice and did not condemn it.

With reference to the intrastate branches, so-called, it is the contention of the defendant that the employees in those branches did not devote a substantial amount of their time to the handling of these special items.

The testimony will show that the bulk of the business is intrastate business because the goods are shipped into the warehouse and come to a state of rest and then they are sent out to the customer as the occasion requires, just as it was developed in the original case.

It is true that there will be testimony that there were a number of these special orders, particularly orders for printed goods, but it was also developed that those orders were small, not only in dollars and cents volume, but in weight, and that it would take but a very little time to handle an order of that kind. Some of the branches received one or two orders of that sort a week and others did not receive that many. Some received more. But the testimony is that most of those items would not weigh more than ten or fifteen hundred pounds. In just one isolated instance an item which was ordered only one time, a case of samples or something, I think the testimony was that it would require about an hour and a half to handle that particular shipment. So, we contend that the employees of those branches do not, within the ruling of the Court, devote a substantial amount of their time to the handling of shipments which were deemed in commerce under the decisions of the Court.

In addition to that it will appear that even if the intrastate branches or the employees other than the employees

whom we consider to be exempt as executive or administrative employees were paid on a per hour basis and that they were paid overtime for any time they worked in excess of forty hours, and then it is our contention that they were not required to but it was done for the purpose of uniformity and convenience in handling, but even if we were to admit that those employees are covered, which we don't, then, nevertheless they received the rate of pay which they would be entitled to under the Act. So, in any event, should there be a violation as to those employees, we claim they are administrative and executive employees.

In some cases it will appear that the branches are small and that the cashier, for instance, devoted some part of his time, even perhaps a substantial part of his time, to the average duties of book-keeper let us say, but he also had the right to hire and fire; he had the right to exercise discretion about the extension of credit, and we contend that he is either an executive or administrative employee within the meaning of the Act.

As to the bonus plan, it is onr contention that the plan was figured on a percentage basis and inasmuch as it was figured on a percentage of the overtime as well as the regular time, which would include in this time the time and a half for overtime, there could not be any violation there.

I think that in a proceeding of this kind it is the burden of the plaintiff to establish that there was a violation.

It would appear that the defendant, for a considerable portion of the time before the suit was instituted, had ceased to violate the Act insofar as the branches in interstate commerce were concerned and had sought to comply. As a matter of fact, Judge Waller, in granting the injunction of the interstate branches, expressed himself to this effect:

So far as the record shows those violations have now terminated but inasmuch as they did exist at one time, I think it proper to grant an injunction because an injunction won't hurt you.

As to the other branches he denied any relief and the final judgment of the Court, when the case was finally completed, after it went to the Supreme Court, simply said that the violations are enjoined in the future where any employees devote a substantial amount of their time to interstate commerce.

I might say this: That at the time that order was entered, both Mr. Dowling and myself, I believe, sought to get an expression from the Court percentage-wise, which would give a little more definite yardstick than the substantial time element but the Court said at the time he thought he was not in a position to do so but if the question arose thereafter it would have to be decided but he recognized the vagueness of the rule and the possibility of technical violation, which all of us committed in the absence of a nominal and definite guide on this plan.

I think that covers the defendant's position in this matter.

I might say this as to Southern Industries on this time. I think it is the duty of the company to keep a record of the hours worked by the employee. The company adopted a plan under which a time clock was installed with the view that that was the most certain and definite method of keeping an accurate record of the time the employees worked at the plant. It is very true that an employee might overlook punching the time clock as he goes in one time for some reason or other, but I certainly do not think that any such rule which prevents an employee from being paid when the record he himself makes fails to show that he worked, could by any stretch of the imagination, be deemed to be a violation of an injunction order.

and it is beyond me how the Administrator can contend that where the employee deliberately fails and violates a rule of the company which would be the best evidence of the hours that he worked, the employer may then be said to be in contempt of Court because he refuses to pay for time which the employee himself has not indicated he worked but merely goes on an oral statement later on, "yes, I did work", when the record does not so show.

The Court:

May I ask you gentlemen a few questions? As I understand this case is a civil contempt case to ask the Court to adjudge the defendant in contempt of Court for violation of a prior order entered in this case.

Mr. Downing:

Yes; that is correct. That is the real object, to get an adjudication from the Court on the different payments, practices, and whether they are in conformity with the decree or not. If your Honor rules they did not conform to the decree it will necessarily adjudge them in contempt.

The Court:

The Jacksonville Paper Company case was orginally decided by Judge Waller in what year?

Mr. Downing:

1941, August 29.

The Court:

Then it was decided by the Circuit Court of Appeals?

Mr. Downing:

May 25, 1942.

The Court:

Then by the Supreme Court of the United States.

Mr. Downing:

January 18, 1943.

The Court:

The appeal brought by the wage and hour division of the Government in that original case was fairly narrow in its scope, was it not?

Mr. Downing:

I don't know who your Honor means. It is against the entire organization.

The Court:

In the relief set out.

Mr. Downing:

It is an injunction.

The Court:

But it was narrow in its scope in the ruling against the defendants named therein.

Mr. Downing:

It was to require compliance with the Wage and Hour Act. It is with reference to certain violations as charged in the complaint.

The Court:

Since the decision of Judge Waller, the Circuit Court of Appeals, and the Supreme Court of the United States, there have been other decisions of the Supreme Court of the United States that have very largely expanded the

Wage and Hour Act as it was interpreted at the time this case was originally filed.

Mr. Downing:

Not on the law of wholesalers, your Honor. The only case where it was broadened was on the percentage proposition. The law is still the same on Jacksonville Paper.

The Court:

None of the subsequent cases, however, in the Supreme Court of the United States, have dealt with that specific question.

Mr. Downing:

Most of the cases which have arisen since have involved Circuit Court cases and certiorari denied.

The Phillips case where the company claimed in the Circuit Court of Appeals they were not in commerce, the First Circuit. They did not appeal from that part of the judgment, the goods going to wholesale outlets.

The Court:

You think the Supreme Court of the United States decision in the recent Roland Electric Company case and the decision of the Circuit Court of Appeals in the Florida Power and Light Company case, and none of the similar cases have any application here on—

Mr. Downing:

Only to this extent: To the extent that we shall show that some of the branches sell and deal in certain goods which are used by manufacturers to produce goods for commerce. These cases are in point on that, your Honor, and they may be in point on others.

The Court:

If a man is engaged in a wholesale business as such and not engaged in the retail business that where he handles the goods in commerce, commerce continues in all the transactions until the goods are delivered to the retailer?

Mr. Downing:

That point is touched on this case in the First Circuit, I believe, that the goods were in commerce until they reached the retailer.

The Court:

The question I am asking you is whether or not in this proceeding here that is the real question that you are raising before this Court?

Mr. Downing:

That is not the only one. We have other cases under the Fifth Circuit decision without reference to the Supreme Court. I have other cases of receipt of an order, handling on the allotment theory, and so forth.

The Court:

Let me hear what you have to say on the question I have just asked. Is it your position here that the decision here that has cited your clients in prompt attempts to inject into this controversy in the petition any of those questions I have just asked Mr. Dowling?

Mr. Kurz:

I think, according to Mr. Downing's statement he is attempting to inject, to reopen the question whether the receipt of goods from out of the State in and of itself subjects the entire operation to the Act. As far as I know there has been no decision by the United States Supreme Court and in the Jacksonville Paper Company case it is to the contrary on that contention.

I might add this: If the Court had so thought it could have disposed of the intrastate branch situation very readily by saying that the employees of the intrastate branches are covered to the same extent as the employees of the interstate branches because the record shows that they are engaged in this activity, but the Court did not say so.

The Court:

Is it your position that the petition filed in this case and the testimony given will support that petition, the position, the attempt to broaden the scope of the injunction itself that has heretofore been granted holding your company in civil contempt of what they would say was the spirit of that injunction? Also a violation of the Wage and Hour Act.

Mr. Kurz:

I judge so from what Mr. Downing has stated. The petition does not so show. It simply alleges a violation of the injunction which was granted, and it is, of course, my position in this proceeding that the scope cannot be broadened because it must necessarily rest on the scope of the injunction and this is not an independent proceeding.

The Court:

Are you through with what you desire to say to the Court?

Mr. Kurz:

Nothing further.

Mr. Downing:

I hope your Honor has not got the impression that this proceeding exceeds Judge Strum's comment at the time

the decree was entered by him. We have been very short-handed in the inspection in the regional office and we have been over a year making the inspection of the branches, home office and warehouse but this goes back, in its inception, to Judge Strum's first remarks which Mr. Kurz alluded to. Judge Strum said:

If in the future you all have any disagreement as to who is covered by the decree and who is not, he said you file a petition and I will pass on the matter and it goes back to June 3, 1943 and very recently to about a year and a half ago when these investigations began.

The Court:

I am just wondering if I would not be in a position to expedite this matter if I used the time from now until two o'clock to read Judge Waller's comment at the time he entered the decree, Judge Waller's opinion, the opinion of the Supreme Court, the petition and answer in this case, so I can see what it is about.

We are proceeding here in a matter where the issue is very limited and restricted. That is a question as to whether or not the defendants have violated and are violating the injunctive order of this Court, assuming that that injunctive order may be very narrow insofar as the Wage and Hour Act is concerned. I am not to try in this case whether or not the defendants are violating the Wage and Hour Act and you are entitled to a broader injunction, a larger injunction than that obtained before, and unless I have a rather definite conception of what the Court had before it in this case I will have some difficulty in ruling on the admissibility and materiality of evidence touching those questions.

Mr. Downing:

May I make one request? We have here one witness from out of town, from Plant City, who is the owner of

a newspaper and he is anxious to get back to his newspaper. Could we put him on at this time?

The Court:
How long will it take?

Mr. Downing:
Twenty minutes.

The Court:
I will be perfectly willing to take his testimony at this time. You may call him as a witness.

45 Thereupon A. P. COOKE was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

Mr. Downing:
This is out of order but we wish to oblige you. The Court has directed that you be called out of order so you can get back to Plant City.

Direct Examination.

By Mr. Downing:
Q. Please state your name?
A. A. P. Cooke.
Q. What business you in?
A. Newspaper publishing business.
Q. What newspaper?
A. Plant City Courier.
Q. In what capacity are you connected with that newspaper?
A. I am co-owner with my wife. Co-owner and publisher.

Q. Are you also the editor?

A. Also the editor, business manager, and also the flunkie.

Q. How long have you been with that newspaper?

A. With the courier?

Q. Yes.

A. Since September, 1944.

Q. Before that, were you in the newspaper business?

A. I have been connected with a newspaper business all my adult life.

Q. How far back does that go?

A. 1921.

Q. How long with the Tribune. You were with the Tribune?

A. I was with the Tribune about ten years.

Q. I mean the Tampa Tribune. The Tribune at Tampa?

A. About ten years.

Q. Were you with them at the time you went with the Courier?

A. No. There was a lapse of about a year there when I was drafted into a war agency service, and when I got out of that, I took over the Courier.

Q. What position did you hold at the time you left the Tribune?

A. State news editor.

Q. Did your job in that capacity require you to go around the State at all?

A. Within the circulation territory of the Tribune; yes.

Q. Did you become familiar with similar work of some of the weekly newspapers?

A. Yes.

Q. In that territory?

A. In a general way.

Q. Are you familiar, in a general way, with the kind of newspapers they publish and their circulation?

A. Yes; I am familiar with the kind of newspapers they publish and their circulation, but I reluctantly say, most editors are inveterate liars when it comes to their circulation.

Q. That is a frank admission. What is your own circulation?

A. That happens to be sworn to and I think the last sworn figure was around 2,800.

Q. Was that a statement which you make to any agency or part of the government?

A. No. It was made to the N. W. A. Company in Philadelphia.

Q. Do you make any statements to the Post Office Department in connection with your second class mailing privilege?

A. Yes, we make an ownership statement once a year.

Q. About your circulation?

A. We make sworn statements, signed sworn statements as to the circulation and we make a semi-annual statement to the post office giving the breakdown by numbers of copies, which go into the various postal zones.

Q. I think I shall leave that for the moment and ask you if you buy any products from the Tampa Paper Company of Tampa?

A. Yes, quite a bit.

Q. What do you buy?

A. We buy newsprint. We buy bond paper. We buy book paper. We buy envelopes. We buy ink.

Q. Which of those outlined do you use in publishing your newspaper?

A. The newsprint.

Q. What about the ink?

A. We do not buy that kind of ink from them.

Q. Do you use your newspaper print which you purchase from the Tampa Paper Company for any purposes other than for publishing the newspaper?

The Witness:
Let me ask you one question?

Mr. Downing:
Yes.

The Witness:
You mean in its raw state?

Q. In the state you get it from the Tampa Paper Company; do you use it except for printing your newspaper?
A. No.
Q. Do you print the newspaper out of it?
A. We print the newspaper from that paper.
Q. How much of it do you consume in pounds or tons?
A. I don't want to be facetious, but I will say that we could not get out our next issue—on this point, it is on an average of a ton or about two tons per month or perhaps a little more.
Q. But do you get it from any other one, other paper company, other than the Tampa Paper Company?
A. We have never been able to.
Q. Now, do you get as much newsprint as you want from the Tampa Paper?
A. Goodness no.
Q. And do you try to get more?

The Court:
Just answer the question.
A. Yes.

Q. Was there any system or scheme by which the Tampa Paper Company allots or allocates to you the paper you want?

A. It would have to be a system of your own. We use what we get. Just what the formula for that is I don't know.

Q. So you get about two tons a month?

A. Just about.

Q. Do you get some out of each shipment they receive?

A. We hope to.

Q. Do you still hope to?

A. Yes.

Q. At one time the W. P. B. apportioned your allotment?

A. Yes. The War Production Board took over the allocation for paper.

Q. Up until how long ago did that allocation operate?

A. Roughly I would say in the early fall of 1935 or maybe for thirty or sixty days.

Q. Under the W. P. B. did you get more or less paper than you get now?

A. We got more.

Q. How much more?

A. It is hard to express in pounds or tons, but I will say we got all we needed. We probably got at least six or seven tons a quarter.

Q. How much out-of-State circulation do you have a year?

A. I am going to have to take a shot in the dark on that thing and say about fifteen percent.

Q. Your total circulation is what?

A. Now around three thousand.

Q. That would be about four hundred and fifty copies?

A. Four hundred and fifty to five hundred copies.

Q. Is the situation in Florida, with reference to the small town newspapers, any different from that in other states that you know with reference to out-of-state circulation?

A. I would say it was.

Q. Why?

A. Because there are a great many people who live in Florida part of the year who want to keep in touch with their home affairs and things during the time they are away.

Q. During the war did you have any subscribers or mailing list of service men?

A. At the peak of that time, which was a year ago or a little more we had over seven hundred on the A. P. O. list.

Q. Did you have other out-of-state circulation in addition?

A. Yes.

Q. Did you have any out-of-state advertisers?

A. We could not live without them.

Q. I want to read you a list of small newspapers down in that general vicinity and ask you if you know them and are familiar with them in general and with the kind of newspaper they publish?

Kissimmee Gazette
Winter Haven Herald
Winter Haven Daily News
Florida Chief Pub. Co.
DeSoto Publishing Co.
Highlands County News
Avon Park Sun
Tarpon Springs Leader
Clearwater News
Brooksville Journal
Brooksville Sun

Bradenton Herald
Haines City Herald
Polk County Democrat
Polk County Record
American Printing Co.
Sebring American

Do you know those newspapers?

A. Yes, I know them by sight and read some of them regularly and others occasionally.

Q. Do you know how frequently they publish their sheet?

A. With the exception of the Bradenton Herald, which is daily, one in Bartow—I think it is a Polk County Record which is semi-weekly, and the Winter Haven Chief, they are all weekly newspapers.

Q. Is yours weekly?

A. Mine is weekly.

Q. Do you know in a general way how their circulation compares with yours in size, whether smaller or less or—

A. I would say some run right along with us except the Bradenton paper, which I know is a good deal larger but most of them are less.

Q. From your knowledge of the newspaper business do you know their general situation on the out-of-state circulation, how it compares roughly to your own?

Mr. Kurz:
I object.

The Court:
Sustained.

Q. Will you state for the information of the Court the basis on which you arrived at your estimate of fifteen percent of out-of-state circulation?

A. I think I explained a minute ago that the semi-annual analysis that we are required to give the post office show a breakdown of the postal zones, of the number of papers which go to each zone. Now, I don't want to be technical, but the post office zones hold as a basis for figuring the pounds rate by a distance over the average of six months without having to do that each week.

Q. In whichever location, whatever zones are outside of the State of Florida?

A. I am not certain but when I told you twelve or fifteen percent I was thinking of zones six, seven and eight, would include A. P. O.

Q. Would include A. P. O?

A. Yes.

Q. For what purpose do Newspapers use newsprint generally?

A. May I break that question in two?

Q. Go ahead.

A. The newspapers which use a web press, a press which is fed from the top roll, will use about ninety-nine percent exclusively for the publication of the newspaper.

Papers which use the type of press in which they feed individual sheets will exclusively use it for other purposes.

Q. In that last item, are you referring to each sheet?

A. In the last item, one that cuts one sheet at a time.

Q. If the newspaper is printed in rolls, you say ninety-nine and a half percent of the times it is used in printing the newspaper?

A. At least.

Mr. Downing:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. What type of press do you use in your publication?

A. It is a flat bed rotary press. It is a web Goss Comet press, if you happen to be familiar with trade names.

Q. Do you use newsprint for any purpose except the publication of your paper?

A. We never use roll newsprint for any other purpose.

Q. But you use roll print in publishing your paper?

A. Yes.

Q. Is the newsprint you buy from the Tampa Paper Company roll newsprint?

A. Yes.

Q. All of it?

A. There may be a few little odd jobs that we order small special cuts of a certain size for, but it is not used in the newspaper.

Q. How many tons of paper do you use per month?

A. I would say roughly on an average, say about a ton a month; five or six hundred pounds a week.

Q. You say you get two tons per month from Tampa Paper Company?

A. No. I said we did get that under the War Production Board allocation.

Q. How much do you get from Tampa Paper Company now?

A. Well, without going into invoices and things, it would be rather hard to say, but we don't get all we need and we are strictly going along on a hand to mouth basis. We have enough in the shop to get out this weeks paper, and we are hoping to get some more next week.

But, to answer your question, I would say between five and around five—around five hundred pounds a week average.

Q. You get it weekly?

A. We get it when we can. Sometimes we get a two weeks supply in advance, but that is rare.

Q. How many orders do you place a month on the average with the Tampa Paper Company?

A. We don't place orders systematically. We have a continual haranguing with them to let us have paper whenever they get it.

Q. From what other sources do you get other newsprint now?

A. None.

Q. Your entire supply comes from the Tampa Paper Company?

A. That is correct.

Q. You referred to the use of newsprint in the raw state?

A. Yes.

Q. What do you mean by that?

A. I mean, comparing that with having to cut it into individual sheets of a certain size.

Q. And the paper you get from the Tampa Paper Company is all in the raw state?

A. In rolls.

Q. You mean in rolls?

A. In rolls.

Q. You referred, in your estimate of the out-of-state circulation, to a report made to the post office department?

A. Yes.

Q. When was the last report made on that?

A. They are made as of March 1 and September 1, or perhaps it is October 1.

Q. A report was made on March 1, 1946?

A. Yes.

Q. And that is your best recollection that the report would show fifteen percent out-of-state circulation?

A. I think my answer was this: that it would show fifteen percent in zones six, seven, and eight. I can't tell you right off hand without a postal map just exactly where the zones are, going from Plant City. They are in certain ones, but I can't tell you where the boundaries are.

Q. Can you tell us how many copies of each issue you do send out of the state?

A. Not without making an itemized check, item by item.

Q. Then your testimony, about fifteen percent, was not a proper answer to—

A. It was the condition as of March 1.

Q. I think you just told me that the fifteen percent covers the zones six, seven and eight?

A. That is true.

Q. That you could not tell just what proportion of the zones—

A. I thought you meant as of now, this minute. I am speaking—

Q. I thought you said—

A. I am speaking of March 1. At that time, an individual count was made.

Q. It showed three hundred and fifty per issue of out-of-state circulation?

A. No. I said it would probably run between four hundred and five hundred.

Q. And as of now, you don't know what your status is on that?

A. No, but the probability is it is a little larger.

Q. When you said, the probability is the circulation is a little larger, did you refer to the circulation of six, seven and eight?

A. I was referring to what we call away from home. Maybe if I gave you my reasons for saying that, I might

make it clear. In the summertime, when people begin to go to their respective homes in the north. In addition to that, it was called to my attention the other day that we have something like thirty papers going to Hendersonville, North Carolina to people who are residents of Plant City, who are residents there for the summer.

Q. But you have no actual count nor actual record as to your present out-of-state circulation, do you?

A. No; we haven't; and the reason we haven't is none has been required. The post office goes on the theory that what is average for six months will hold.

Mr. Kurz:

That is all.

Mr. Downing:

That is all.

The Court:

Now, you gentlemen have a reference there to locate this?

Mr. Downing:

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Supreme Court, 317-574.

Mr. Shelton:

I have an amendment, but I can wait until after the recess. It is just adding some names to paragraph seven of the complaint based on the depositions we took in and at the Jacksonville branches.

The Court:

They have not been filed here?

Mr. Shelton:

No. It will add some names of misclassified shipping clerks and cashiers whom the complaint claims are not exempt.

The Court:

Very well. Court will be in recess until two o'clock.

(Thereupon, at eleven forty o'clock, A. M., June 17, 1946, the Court took a recess until two o'clock P. M. the same day.)

June 17, 1946, 2:00 P. M.

Afternoon Session.

The Court:

I will ask you one question before you proceed. You classified certain officers as interstate officers and a certain intrastate.

Mr. Downing:

Yes.

The Court:

In the final adjudication, how many officers did you classify as intrastate. Does the injunction run against all of them except Daytona?

Mr. Downing:

Which is new.

The Court:

Against all of them. As far as the final disposition of the case goes, there is no distinction in officers.

Mr. Downing:

Except they are set up a little differently under the modified decree. The modified decree, in one division, covers Southern Industries, in another division covers the interstate branches, the home office and warehouse and a third division covers the intrastate branches only, covers all of them except Daytona, which was new.

The Court:

Covers all of them except Daytona. You agree with that?

Mr. Kurz:

That is correct.

The Court:

Therefore, insofar as the testimony is concerned relating to any of these officers, it should be admissible under the final decree.

Mr. Downing:

I think so. We have reached an agreement with counsel for a stipulation on the coverage on the home office and warehouse in Jacksonville, and on Southern Industries in Jacksonville, and on the Florida Paper Company in Jacksonville, and we would like that stipulation to show of record.

The Court:

Will you please read it.

Stipulation.

Mr. Downing:

It is stipulated between counsel that the defendant admits a coverage of the following branches and business

and of its employees employed therein: The home office and warehouse at Jacksonville

Jacksonville Branch Office at Jacksonville.
Florida Paper Company at Jacksonville
Southern Industries at Jacksonville

Mr. Kurz:

That is correct. There is no question about those being engaged in interstate commerce.

The Court:

Are there any other issues in this case which you gentlemen think might reasonably be disposed of by stipulation that we are working on now.

Mr. Downing:

I think there may be certain features in the evidence, the record that may be produced here, that we might summarize and agree on the same as we did in the Quick Freeze case. We subpoenaed here the records of the accumulated hours account and the bonus payment records of wages and hours. Generally, I think, instead of offering those individually, although they are the best evidence of what has been done, perhaps we could make a summary of certain classes of cases and stipulate those instead of incumbering the record with all of those records, but I think that will come later on. We will see what can be accomplished. Mr. Reinoehl is familiar with it.

The Court:

In that case, instead of submitting a truck load of papers into the record, we will stipulate what the government themselves want to show and then have those offered in evidence and have them photostated.

Mr. Kurz:

We will be very glad to stipulate anything we can.

The Court:

Anything that you may do to expedite it, let us do it, but I will say in connection with that, let that suggestion be followed in connection with any testimony relating to this matter,

Mr. Kurz:

If the Court please, it might help if we could understand whether there is any contention on the part of the plaintiff in this case that the employees in these so-called intrastate branches are not paid in accordance with the injunction. We understand, of course, there are certain employees classified by us as being exempt under the administrative, under the executive exemption, which counsel for administrator contends are not so exempt, but I understand there is no contention that any of the other employees are not being paid in accordance with that, and if there is, such a contention, I think it would aid very much if we could know as to where and what employees.

Mr. Downing:

I think that I can supply that information. I think that the complaint shows specifically that the cashiers and other employees—that was, that the employees who are employed under the accumulated hours plan are not being paid properly for overtime, and that has been in existence in the interstate branches. The defendant knows where it is in existence, and we say that the employees who are compensated under the bonus plan are not properly compensated for overtime.

As far as the bonus plan, it stands pretty well throughout the defendant's corporation. The defendant knows wherein they are.

The Court:

Being specific on that, it is that some of those employees are not exempt, and that those methods applied only with reference to the accumulated hours plan and the bonus.

Mr. Downing:

To the employees other than those who are exempt who are paid under the accumulated hours plan, and those who are paid under the bonus as the Tampa and Orlando ones where their accumulated hours plan was not into effect. We say there has been some violation there. In other words, a few employees, the hours were not recorded correctly at Tampa—does not amount to much. Orlando is substantial.

Mr. Kurz:

There are depositions—

Mr. Downing:

Mr. Kurz knows who they are because we took the depositions. Two ladies at Tampa testified somewhat on the record, and there were three colored employees and one white girl at Orlando, testified on hours, we allege that were not paid properly.

In Southern Industries we say the piece workers were not paid properly, since they were paid straight time for overtime hours, and we say the employees were not paid properly where they did not punch in and did not punch out, and lost that time. We are vague as to who they are. We have the names of two or three—Dolly P. Cox, Jack Mather, and two of them.

The Court:

This merely goes to the policy to pay and not to the amount of their wages.

Mr. Downing:

To the fact that the defendant failed to pay, when they worked overtime, their due back wages, after the punch out time. It also goes to the fact that the records are not accurate.

We say the responsibility is on the defendants regardless of their attempt to shift that to the employees. Under the act, the obligation is on the employer to see that the records are correct.

That just about covers it. There are a few minor and trivial things, I don't think are particularly important. I think we have covered the main things, that the plaintiff is seeking, and one of them is, the plaintiff has subpoena duces tecum on Mr. Reinoehl covering the matter of the accumulated hours record and the bonus record and the hourly record, since the records are the best evidence of what they contain with reference to the amounts paid.

In addition, we omitted on the general records the coverage that we have on the first trial.

We did not think it was necessary. We can prove our case without it.

We also have the coverage statement on the interstate branches for months, but we have asked for the production of any records they have which will show those special dates. We have been conducting our investigation so that in many cases the difference in the records show on their face that the goods were ordered special, in some cases, to be specially printed with the customer's name, and we have asked for the production of those records. At this time the plaintiff asks if the defendant is prepared to respond to the subpoena duces tecum.

Mr. Kurz:

The subpoena was served last Tuesday, I believe, and as far as we have been able to get those records together we have obtained them. I understand that there is about a truck load of them. I was wondering how we would offer them, with reference to those special orders. We are trying to comply with their request.

Mr. Downing:

May I ask for the accumulated hours records and the bonus records and the pay roll records? Are they being produced?

Mr. Kurz:

The pay roll records are accumulated hours.

Mr. Downing:

I think we could go into a portion of our case if we had those productions in connections with the accumulated hours record. We could use the Jacksonville records, accumulated hours, if it is typical if those records can be produced.

The Court:

You want to start with them?

Mr. Downing:

I would like to, your Honor.

The Court:

Let the witness producing them take the stand.

Mr. Shelton:

Your Honor, as I metioned before the recess, the depositions taken at the various branches indicated some change in classification name. Where there were shipping

clerks or cashiers whose names we did not place in the original complaint, and we would like to have the names of them by amendment to paragraph 7 (c) of the petition.

They are as follows:

Name.	Branch.
R. F. Boykin	Tallahassee
J. O. Gildchrist	Pensacola
Julian K. Davis	Tampa
Sherman A. Owensby, Jr.	St. Petersburg
Herman J. Sanders	Savannah
Ames Paul Cox	Savannah

The Court:

That motion merely adds names. It does not in any way broaden the issue.

Mr. Shelton:

It is the same type of employees as we named in that paragraph.

The Court:

Have you any objection?

Mr. Kurz:

We have no objection.

The Court:

The motion is granted on those persons named, and the petition will be amended to include those person's names.

66 Thereupon EDGAR C. HALL was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:

Q. Your full name?

A. Edgar C. Hall.

Q. You are employed by the Jacksonville Paper Company?

A. Yes.

Q. In the home office at Jacksonville?

A. Yes.

Q. In what capacity?

A. Sales manager.

Q. In what department?

A. Wrapping paper division.

Q. Is that known as the coarse paper department?

A. Yes.

Q. Does your company have another department for another paper known as the fine paper department?

A. Yes.

Q. Who was your predecessor?

A. Mr. Graham.

Q. Mr. H. D. Graham?

A. Yes.

Q. I believe you testified in this case originally?

A. Yes.

Q. Manager of the coarse paper department?

A. Yes.

Q. How long have you been with the company?

A. A little over three years.

Q. You weren't here then?

A. No.

Q. Does Southern Industries furnish to the company in its branches a portion of the items handled in the coarse paper department?

A. Yes.

Q. Is there or not a fairly discernible line drawn between the two departments, the coarse paper and the fine paper?

A. Yes.

Q. Doesn't your department in Jacksonville order for all the Jacksonville branches the goods which each require to supply their customers?

A. Yes.

Q. Do I understand that no ordering is done by the branches themselves, except through your department in Jacksonville?

A. That is correct.

Q. So those branches all take a portion of the goods manufactured by Southern Industries?

A. Yes.

Q. Would they, in general, take about the same proportion?

A. No, sir.

Q. Do all of the Jacksonville paper branches have a coarse paper department?

A. Yes.

Q. Do you know whether all of them have a fine paper department?

A. They do not.

Q. Can you state which do not?

A. Yes.

Q. Which?

A. Daytona, West Palm Beach, St. Petersburg, Lakeland, and Pensacola.

Q. Tallahassee has a fine paper department?

A. Yes.

Q. Does Macon?

A. Yes.

Q. Aside from the goods furnished the branches by Southern Industries, are there any other goods ordered by you for the branches from manufacturers in Florida?

A. Repeat that.

The Court:

Read the question.

(The Court Reporter read the last question:)

A. Yes.

The Court:

Does that imply that these goods come from a Florida manufacturer?

Mr. Downing:

Southern Industries goods come from Florida. All other goods come from outside the State. It may be developed as we go through the depositions and may be from the testimony here that there are occasional certain instances where some people manufacture the paper other than Southern Industries, will supply the goods for the branches. Generally, the statement made by this witness holds good. Southern Industries supplies all goods manufactured in Florida. All other goods, it is true, distributed by the branches are furnished by out-of-state manufacturers.

The Court:

That is, Southern Industries furnish all the goods for this what you call rough paper department.

Mr. Downing:

No. A portion of it.

(By Mr. Downing):

Q. In that connection, Mr. Hall, can you state roughly, and in general, the average portion of goods supplied by Southern Industries?

A. No, sir, I can't.

Q. Can you make that statement with reference to your own department?

A. I beg pardon.

Q. What percentage of the goods is supplied by Southern Industries?

A. No, sir. I can't tell you what percentage.

Q. Are you familiar with the sales or price book?

A. Yes.

Q. Does that book, in general, list the items which the company, in its branches, normally would stock and carry in the trade?

A. Yes.

Q. In addition to the items listed in that price book, do you have branches and does your company supply to those customers on their order or demand certain other goods to meet their demands?

A. Yes.

Q. Now, I will ask you this; as the result of war time conditions, are there more or less goods listed in the price book which the branches are not able to stock?

A. That, I cannot answer because I was not with the company previous to the war.

Q. Since you have been there has there been any appreciable change?

A. No, sir.

Q. Goods as scarce now as they ever were?

A. Yes.

Q. Are any of them any scarcer?

A. Some of them; yes.

Q. Can you state, in a general way, the approximate number of items listed in the coarse paper price book?

A. No, sir.

Q. Can you state, for the information of the Court, whether that practically would run into the hundreds?

A. Yes.

Q. Will it run into the thousands?

A. No, sir.

Q. Just into the hundreds?

A. Right.

Q. Can you state for the information of the Court, since you have been there, approximately what proportion of those coarse paper items the branches will be able to carry in stock for customers?

A. No, sir; I could not.

Q. I believe you said they were unable to stock all of them?

A. Yes.

Q. But they take orders for the others?

A. Those which are available from the mills.

Q. Are there any available?

A. No, sir.

Q. None at all?

A. They are not successful to get it.

Q. Are there any in the coarse paper price book any stock which you order for your branches?

A. No, sir.

Q. I believe you stated a while ago in addition to the items listed in the sales book, your customers of particular branches order other items not listed in the book?

A. Yes.

Q. Do you order those for the branches?

A. Yes.

Q. Can you state the names of them, some of them; I mean what type?

A. Certain size and kind of books, particular size of books, specialty books.

Q. What else?

A. Special wrapping paper.

Q. Anything else?

A. Items like printed tape and printed sales books.

Q. Any others?

A. No, sir. That about covers all of them.

Q. Mr. Hall, we are discussing your department. Wire baskets were handled in your department?

A. Yes.

Q. They are not ordered specially for the customer.

A. Yes, they are. That is one I overlooked.

Q. Is dry wax handled in your department?

A. No, sir. Dry wax—

Q. I refer specifically to dry wax supplied to the St. Petersburg branch?

A. No, sir. We have nothing like that.

Q. In the coarse paper department?

A. No, sir.

Q. Fluted pan liners?

A. Yes.

Q. You ordered those specially for the St. Petersburg branch?

A. On special orders.

Q. What about pie plates?

A. We carry those in stock.

Q. Where?

A. All of the houses.

Q. I refer specifically to an order for pie plates in the Orlando branch. Do you recall any such instance?

A. No, sir. I don't know of any specific instance.

Q. What about sausage bags? Do you order any of those special?

A. They are supplied by Southern Industries.

Q. Are they printed by Southern Industries?

A. Yes.
Q. What about glassine bags?
A. Supplied by Southern Industries.
Q. Cellophane bags also by Southern Industries?
A. Yes.
Q. You mentioned the sales book?
A. Yes.
Q. Printed sales books?
A. Yes.
Q. Are those specially printed for the customer?
A. Yes.
Q. As a matter of fact, most of those special items which you mention, for the customers, with the customer's name—
A. Yes.
Q. From whom did you get your sales books?
A. Baltimore Sales Book Company.
Q. In Baltimore?
A. Yes.
Q. Do you get orders from all your branches for those?
A. Yes.
Q. In general, can you state whether your branches deal in and handle the same line of merchandise?
A. Yes.
Q. And that also applies, does it not, to special orders?
A. Yes.
Q. You mentioned printed tape?
A. Yes.
Q. A while ago?
A. Yes.
Q. Are you referring to gummed tape?
A. Yes.

Q. What about lineal tape or ribbon. Do you have any of that specially printed?

A. Yes.

Q. Guest checks?

A. Yes.

Q. Beverage napkins?

A. Yes.

Q. Shirt wrappers?

A. We haven't been able to get those specially printed.

Q. Have you, in the past month?

A. Since I have been with the company?

Q. Is that a stock item?

A. Yes.

Q. Your branches carry it in stock?

A. Yes.

Q. What about specially printed shirt bands?

A. We refer to them as stock printed. It has information about laundries and dry cleaners to be used in any laundry.

Q. Do you have any which are specially printed?

A. Any laundry can order them. It has been specially printed for laundries.

Q. Do you handle special orders of that kind, other than being specially printed?

A. For shirt bands?

Q. Yes.

A. We have for stock items, stock printed plain bands.

Q. Let us go back a moment. You mentioned sausage bags, glassine bags, and cellophane bags were supplied by Southern Industries?

A. Yes.

Q. By whom are shirt bands furnished?

A. Harper Paper Products Company.

Q. Where?

A. In Michigan. I am not certain as to the location.

Q. When you are able to get specially printed pie plates, where do they come from?

A. I do not know anything about specially printed pie plates. I haven't seen any record of anything of that kind.

Q. We covered sales books?

A. Yes.

Q. Who supplied the specially printed gummed tape?

A. Central Paper Company.

Q. Who supplies the laundry tape and the printed ribbons?

A. General Print and String.

Q. Where?

A. Milwaukee. Chicago Print and String Company, Chicago.

Q. Who supplied the printed guest checks?

A. Baltimore Sales Book Company.

Q. Printed Beverage Napkins?

A. Erving Paper Mills.

Q. Where?

A. Erving, Massachusetts.

Q. You have been there at a time when you ordered specially printed shirt wrappers or shirt bands?

A. I ordered them. We have not been successful in securing them.

Q. Who did you order them from?

A. Nashua Paper Company.

Q. Where?

A. Nashua, New Hampshire.

Q. Do you order printed notion books?

A. Yes.

Q. From whom?

A. Security Book Company.

Q. Where?

A. Cincinnati.

Q. Printed copy book?

A. Yes.
Q. From whom?
A. Fairmount Paper Company.
Q. Where is that?
A. Philadelphia.
Q. Order special printed shipping tags?
A. Not in coarse paper.
Q. Is that a fine paper item?
A. Yes.
Q. That is ordered specially printed?
A. Yes.
Q. From whom?
A. Southern Industries.
Q. All of them?
A. I believe so.
Q. What about specially printed laundry boxes?
A. From Southern Industries.
Q. All of them?
A. Yes.
Q. Is the same true with dry cleaning boxes?
A. Yes.
Q. Dry cleaning boxes specially printed?
A. Yes.
Q. From Southern Industries?
A. Yes.
Q. How about specially printed clothing boxes?
A. Southern Industries.
Q. All of them?
A. Yes. Not all of them, but some.
Q. Where?
A. Sage Folding Box Company?
Q. Where?
A. Philadelphia.
Q. Who supplies you most of those special items?
A. Southern Industries.

Q. Do you handle and wrap?
A. Yes.
Q. Tell me—
A. Wrapping paper.
Q. Is it ordinarily specially printed with the customer's name on in most instances?
A. The Jacksonville warehouse—
Q. That would be ordered from the branches?
A. One or two branches had that.
Q. From whom did you order that?
A. The Hays Company, Tampa.
Q. Is that printed there?
A. No, sir.
Q. Where is that paper printed?
A. Pacific Coast.
Q. Where?
A. Pacific Northwest Paper Mills.
Q. How does Hays come into the picture?
A. Merely a broker.
Q. Manufacturer's agent?
A. Yes.
Q. Envelopes a fine paper item, or coarse?
A. Fine paper.
Q. Entirely.
A. We have some in coarse paper.
Q. What type, business envelopes?
A. Yes, and small—
Q. And smaller ones?
A. Yes.
Q. What size are the others?
A. Large size envelopes.
Q. Any special kind of paper?
A. No, sir; we don't specify any special paper.
Q. Any of them specially printed on order for customers?
A. Not in coarse paper.

Q. I will ask you specifically about an item of envelopes made specially for a Tampa dry cleaning company which were manufactured for use out of the country, assuming that the ship might be torpedoed, or something, and the envelopes might get wet. Do you know of such item?

A. No, sir.

Q. You don't know where they got that from?

A. No.

Q. Do you order any specially printed hat boxes?

A. I have ordered them but haven't been successful in getting them.

Q. From whom?

A. Sage Folding Box Company.

Q. How much adwrap do you order for the branches in specially printed wrapping paper?

A. Yes.

Q. From whom?

A. Fox Paper Company.

Q. Where is that?

A. Cincinnati.

Q. I will ask you about the general subject of ice cream cups, cartons, milk caps and milk cups, and things of that sort. I will ask you if you order for your branches any of those items specially printed?

A. Yes.

Q. All of them? All of the branches?

A. I don't recall whether we have had special orders for all of them on order—that is, special printed orders or not.

Q. What about cottage cheese cups and pails, and things of that sort?

A. We have ordered them.

Q. Specially?

A. Yes.

Q. Any paper soda cups of particular size or printing which you order specially for your branches?

A. Soda cups, none. We have not been successful in getting them.

Q. Have you ordered them in the past?

A. Yes.

Q. From whom?

A. Dixie Cup Company, American Paper Goods Company.

Q. Where are they?

A. Dixie, Darlington, South Carolina. American Paper Company Goods, Kensington, Connecticut.

Q. I don't believe that I asked you where the special ice cream containers come from?

A. From the same party I just mentioned.

Q. Ice cream containers?

A. Continental Can Company.

Q. Where is that?

A. Boston.

Q. You have not been able to supply your branches with all the goods they need to fill orders?

A. No, sir.

Q. As a result of that, has the home office here adopted any practice or custom of dividing the goods which they get among their branches?

Mr. Kurz:

I object. Irrelevant and immaterial.

The Court:

I will hold that objection under advisement.

Mr. Downing:

Answer the question.

The Witness:
What was it?

Mr. Downing:
Read it.

(The Court Reporter read the last question.)

A. We try to give them as nearly as possible the proportion which they are entitled to, according to their sales.

Q. Proportion to which they are entitled?

A. Yes.

Q. According to their sales?

A. Yes.

Q. You mean, on their sales at past periods?

A. On present sales in comparison with the other branches, and also—

Q. Is it not a fact that some branches now are getting orders for and sell substantially more goods than they did in the past in proportion to the other branches?

A. I don't know that.

Q. Explain to the Court how you are able to proportion or allocate the coarse paper items among your branches, or the basis on which you do it?

A. The basis is this. Those few items which I do allocate based on the quantity which they have been ordering on the quantity which they may have on hand.

Q. You keep track of their inventory right here in Jacksonville?

A. Yes.

Q. Perpetual inventory in those items?

A. I don't know. I have a few items I keep record of.

Q. Do I understand when you get in a shipment from any manufacturer or when you learn that when a ship-

ment is to be made, you check against the branch's inventory and against the orders from that branch, and make your allocation accordingly?

A. On the few items which I have a record of.

Q. On those where you have no inventory, how do you make your allocation or allotment?

A. I try to allot it as nearly as possible to the number of salesmen which I have a list of, and I know the number of salesmen in each branch out of which they are working, and the population in the various trading areas.

Q. You haven't any information on your record of the volume of sales made by these particular salesmen, or do you base it on population?

A. I base it, to a certain extent, on population and the number of salesmen in the branch.

Q. Do you base it, to any extent, on the customer's salesmen and what those customers have ordered in the past?

A. Not on any specific customers; no, sir.

Q. I mean the customers as a whole, and the particular salesmen.

A. I did not check back on any—

Q. In making that apportionment, are you following a system or formula which you devised yourself, or is it one which was devised by your superiors?

A. It was in effect before I came with the company.

Q. When Mr. Graham was there?

A. Yes.

Q. You simply followed it?

A. Yes.

Q. Who is your superior?

A. Mr. C. D. McGehee.

Q. As a rule, do you allot or allocate the goods to the branches under a more or less set formula of percentages?

A. What?

Q. In other words; for example. will you allot or apportion twenty per cent of a shipment of a particular type and twenty-five percent of some other, or some other percentage?

A. No definite percentage.

Q. Does the percentage vary from time to time?

A. Yes,

Q. They might get twenty-five percent from one shipment and twenty on another shipment?

A. Yes.

Q. Is that right?

A. Yes.

Q. Does that illustration hold good for the system for the branches, generally on other branches the way the system operates?

A. Yes.

Mr. Downing:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. Mr. Hall, you testified about certain special orders that Mr. Downing inquired about?

A. Yes.

Q. Are all of those orders printed with the customers names?

A. No, sir.

Q. Are some of those special orders items that are carried regularly in stock?

A. They are, if we happen to have them in the warehouse and we want a special order rushed out.

Q. You mentioned particularly printed bags?

A. Yes.

Q. Where do they originate?

A. A great many of them, Southern Industries.

Q. What about printed bags. Were do they come from?

A. Certain kinds from Southern Industries.

Q. What other kinds are there that Southern Industries does not supply?

A. Printed notion bags from another source of supply, printed coffee bags.

Q. Can you state, approximately, the number of orders that you would get, say from the Tampa branch for that particular item, or sort of item?

A. No, sir.

Q. Can you state it as to any other branch?

A. No, sir.

Q. Can you state the particular number of orders received for that type of, and a similar type, of merchandise, such as gummed tape, and sales books and wire baskets, from any particular branch?

A. Not any definite number, no, sir.

Q. Can you state how that type of merchandise compares in volume with the total merchandise in the coarse paper department?

A. Very small proportion of it; extremely small.

Q. When you mentioned volume just now, you stated it was a very small percentage?

A. Yes.

Q. Did you refer to a dollars-and-cents volume?

A. Yes.

Q. Volume?

A. That is right.

Q. How about the handling involved in the different types of merchandise, such as the loading and unloading and delivery? That, I take it, would depend on the bulk or weight of the merchandise, would it?

A. That is right.

Mr. Downing:

I object. That is no part—this witness is introducing new facts with reference to loading and unloading.

The Court:

The question is not any more speculative than any of yours, and I have let him answer them.

Q. With reference to the handling required of this special type of merchandise, specially printed orders and other special orders for particular customers. can you state how the bulk of that merchandise compared with the total bulk of the merchandise handled through your department, the coarse paper department?

A. Small portions; very small portion of it.

Q. Aren't fluted pan liners a stock item?

A. No, sir; we do not stock them.

Q. You mentioned ad rap?

A. Yes.

Q. I believe you stated that one or two branches got orders for that kind of paper. Can you state, in the course of the last six months, how many of that type of orders you have received?

A. Not accurately; no, sir.

Q. You haven't any information on that at all?

A. Perhaps twenty orders.

Q. That would be for all of your branches?

A. Yes.

Q. You testified as to ice cream cups and cottage cheese cups, and so forth?

A. Yes.

Q. If I remember correctly, that related to only such articles that were specially printed with a customers name; is that correct?

A. Yes.

Q. What branches handle those?

A. Ice cream cups—there are two kinds—what we call a tie lip kind; ice cream cups from the Dixie Cup Company and the American Paper Goods, are not stock items.

Q. The first item then is a stock item, is it not?

A. Right.

Q. What about beverage napkins? Are those specially printed?

A. Some of them are.

Q. With customer's names?

A. Yes.

Q. Do all of your branches handle those?

A. On special orders.

Q. Do you get special orders from all branches?

A. I do not recall whether we have orders from all the branches on them or not.

Q. Do all the branches—

By the Court:

Q. It is an order you would fill on a special order?

A. Yes.

By Mr. Kurz:

Q. Do all branches get the specially printed ice cream cups?

A. If they have orders for them; yes.

Q. If they have an order for them?

A. Yes.

Q. Have you had orders from all your branches in the last six months for instance?

A. Yes.

Q. Do you know which one of the branches has ordered such specially printed item?

A. Partin Paper Company, Mobile.

Q. Only one?

A. Only one I know about.

Mr. Kurz:

That is all.

Re-Direct Examination

By Mr. Downing:

Q. Mr. Hall, you testified on cross examination about the unloading of special items in the branches?

A. Yes.

Q. Do you know what they do with them after they unload them?

A. No, sir.

Q. Is it or not necessary for them to get them to the customer?

A. I don't know whether they haul them to the customer or whether the customer comes and gets them.

Q. You don't?

A. There is no way of knowing.

Q. You have no way of knowing about the delivery practice for the branches?

A. On the special orders; no.

Q. Or on any other goods?

A. Certain cases.

Q. Is it or not generally true that your branches make such deliveries with their own trucks?

A. Yes.

Q. Is it not likewise true that country deliveries are made by common carriers?

A. Right.

Q. Are they, as far as you know, special goods delivered in the same way?

A. Yes.

Q. Now, is it necessary for you to follow up with the manufacturers your orders of goods, not only of stock items but specialty items?

A. Yes.

Q. Do you do that?

A. Yes.

Q. Do you do it frequently?

A. Yes.

Q. Is that because of the shortage of goods?

A. Yes.

Q. Do your branches in turn follow you up to find out what has happened?

A. Yes.

Q. Generally, do they follow up on both stock items and special items also?

A. Yes.

Q. How do they do that?

A. Sometimes by telephone, but usually by letter on a printed form which we have.

Q. Generally, is there more delay in getting a stock item which you order or special order?

A. First; not much difference now.

Q. In general, the follow up would be about the same in both items?

A. Yes; in proportion to the volume of business on the two.

Mr. Downing:

That is all.

The Court:

Will you have a good deal of testimony along the line of this witness' testimony?

(Discussion off the record.)

91 Thereupon C. C. Ross was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:

Q. Your name is Carroll C. Ross?

A. Yes.

Q. You and I have had this pleasure before?

A. Yes; how do you do?

Q. Five years ago?

A. Yes.

Q. I am back at the old stand and I am going over the same thing with you. There might be a bit of difference. Perhaps your position has been changed somewhat in that time. You are still in charge of buying the fine paper items?

A. Yes.

Q. For your branches, are you not?

A. Yes.

Q. I believe you have a different title than you had before?

A. About the same.

Q. You are the manager of the department?

A. That is the same as I was doing, the same work and all about the same job.

Q. Mr. C. C. McGehee is still your boss?

A. Yes.

By the Court:

Q. What company are you with?

A. Jacksonville Paper Company.

By Mr. Downing:

Q. You do all the ordering of the fine paper items for all your branches, do you not?

A. Not all the items. I do most of it but I can't do it all. It is too much.

Q. That is not what I am getting at.

A. All right.

Q. Does your fine paper department do all the ordering for your fine paper to your branches?

A. That is right.

Q. You are in charge of the department?

A. Yes.

Q. Does Southern Industries supply certain fine paper items to your branches?

A. Yes; some items that are classified as fine paper. Some classified as coarse paper as well as fine.

Q. What?

A. Take second sheets, stenographer's notebooks, for example, which Southern Industries manufacture, could be sold for fine or coarse paper.

Q. I want to ask about those you handle. Southern Industries make up and distribute to your branches—

A. That they manufacturer?

Q. Yes.

A. That would be second sheets and stenographer notebooks and legal pads.

Q. What else?

A. And envelopes. All envelopes they make supplied to the branch.

Q. As I understand it, everything Southern Industries makes is bought by the Jacksonville Paper Company and distributed through its branches?

A. Yes.

Q. Jacksonville Paper Cmpany is the only customer of Southern Industries?

A. I don't know about that.

Q. Are you familiar with the fine paper price book?

A. Yes.

Q. Can you state, for the information of the Court, approximately the number of items listed in that fine paper book?

A. That would be impossible to do, with government restrictions and regulations, which are now permitted—we have not been able, in the last few years—items that are short in supply on particular items.

Q. I am not asking you what you can get. I am asking you, in general, how many are listed in that book?

A. Normal times or present time?

A. [Q.] Normal.

A. Two thousand or twenty-five hundred.

Q. You still have that price book?

A. So to speak. You mean that they are kept up to date, for sales?

Q. Is that book supposed to list the items which are normally kept in stock?

A. That is right.

Q. Now, in the present condition when items can't be obtained, that you can't keep them in stock, do you keep the items in the book rather than leave it out?

A. Yes.

Q. As I take it, there are still two or three thousand items in that line in there now?

A. I don't think they run quite three thousand. Between two thousand and twenty-five hundred.

Q. Will you state, generally, for the information of the Court approximately what proportion of those you are able to stock now?

A. That would only be a guess because a branch would buy it. Someone would buy it, and you would not have it. This minute we have it, and a half an hour later someone bought that item out, and you would probably

would not get it for another three weeks, somewhere in the neighborhood of fifty percent—.

Q. Do I understand from that that in cases where you are able to get them, the fifty percent, you do the ordering for your branches?

A. Yes.

Q. Then, in other words, there would be from two thousand to twenty-five hundred that you are able to get, you will order for your branch ~~if~~ they place the order?

A. And it is available from the source of supply.

Q. You mentioned only four items that Southern Industries supplied your branches through fine paper. You mean there are only four out of twenty-five hundred odd in the book?

A. Your question is fine paper by Southern Industries —you mean all the items carried in fine paper?

Q. How many of them in that book are supplied by Southern Industries?

A. Not over half a dozen that are normally listed. Of course, it would be different items. For instance, envelopes, seventy-five different envelopes.

Q. Grades and sizes?

A. Different weights and all sizes and all that.

Q. Do you order any goods for your branches from manufacturers in Florida other than Southern Industries?

A. Yes.

Q. How many of such manufacturers and what items?

A. One of them would be wiping rags, an item in manufacture; as far as I know, being actually manufactured in the State of Florida there is practically none.

Q. Just for my own information and the Court's information, is a wiping rag a fine paper item?

A. That is right. We carry them principally to wipe off the rollers of the press. It is coarse and fine so far as—

The Court:

Accessory.

Q. Then, I understand that so far as the manufacturers go, except Southern Industries, they are all located in other states?

A. Practically entirely.

Q. In general, do the branches take about the same proportion of the Southern Industries goods?

A. No.

Q. Some branches—

A. Take more than others. Orlando would not use anything as much merchandise as Miami.

Q. I am speaking of comparison with other items, fine paper?

A. No. Items Southern Industries use for fine paper would not represent probably ten percent of the fine paper items.

Q. Would that percentage run fairly regular throughout the branches for the fine paper department?

A. As a whole, with some variations in different localities. One might run a little more or less.

Q. So far as the items listed in the fine paper price book, do your branches sometimes order from you for their customers other items not listed in that book?

A. Yes.

Q. Where you can get them, where they are available, do you place orders with the manufacturers to fill your customers' orders?

A. You place the orders to fill the branch order the branch requested.

Q. For items not listed in the price book?

A. Yes.

Q. Generally, are those items known as special?

A. Yes.

Q. They are not items carried in stock?

A. That is right.

Q. Do you get such orders from all your branches?

A. From time to time.

Q. Will you state for information of the Court what home of those types of goods are?

A. For instance, a little cellophane pocket fits into a loose-leaf ring binder that you put a picture or letter or whatever they want to display. Just call them transparent envelopes which fit a ring binder; a special size envelope with a special window would be a special item of that character.

Q. Who supplied you with the special envelope and window?

A. General Stores.

Q. Do you get any from Southern Industries?

A. Not in the real specials. We get special windows from Southern, Special envelopes.

Q. How do you get the special envelopes?

A. Probably of an odd shape or an odd stock, a stock of Southern Industries would not carry the weight; they would not carry; they might be specially printed with some special type of printing that Southern Industries would not be equipped to handle.

Q. What?

A. For instance, a coupon envelope like you use at the beach, at the bath houses when you go in bathing where you tear off a flap off the envelope, with a number at the top of the flap for a stub, and you use that as a coupon to reclaim your valuables.

Q. Is that a special order?

A. Special order patented envelope.

Q. Where do you get them?

A. Number of places; United States Envelope and others.

Q. They are all outside of the State of Florida?

A. Yes.

Q. Any other items like that not listed in the price book, that you get for your branches?

A. We can't list everything we carry or everything that is made out of paper in that price book. Each day you get call for anything that is made of paper, for instance, paper shoes, and slippers. The air station wanted them when they started the separation of the boys, wanted paper slippers. We did not know some fellow made them in Brooklyn.

Q. Did you get them?

A. Yes.

Q. Will you state, for the general information of the Court, approximately how many items are there outside of the price book that you are required from time to time to order for your branches?

A. The answer to that would be the total number that the manufacturers list or carry. The paper products would be several thousand.

Q. About twenty-five hundred in the price book?

A. Yes.

Q. Of the twenty-five hundred in the price book, about half of them you can't get yourself except on special orders?

A. You don't get them on special orders. You get them on allotment.

Q. During the war years have you been able to supply your branches with as much goods, as many goods as they wanted?

A. No, sir.

Q. As many goods as they ordered from you?

A. No, sir.

Q. By reason of that, have you found it necessary here in the home office to allot or allocate or divide among your branches the supply which you received?

A. Yes.

Q. Will you explain to the Court the basis of your allocation or division of those goods among the branches?

A. Yes.

Mr. Kurz:

May we have the same objection?

The Court:

Yes.

A. That would be pretty hard to say. As a rule, we have been allocated by the mills as to how much total of a certain grade we may have, and we, of course, try to distribute it equitably amongst the branches on the basis of the volume of business they have been doing in that particular item.

For instance, say, Orlando would need two thousand pounds of an item to run them over a period the three months. In the same period Miami would probably need fifteen thousand pounds. The result was, was to have to supply the total tonnage alloted us by the mills for a three months' period, up amongst the branches based on their sales.

Q. Sales in the past?

A. That is right.

Q. No matter what their current demand might be, you would allocate on the basis of the past sales?

A. On the allotment that we were set up by the mills.

Q. Did you use any special base period in determining how much your branches had sold? What was your base period, if any?

A. We have always tried to judge over the area on the three months' period of sales.

Q. And when you first started the allocation or allotment, what period did you use as the basis to determine how you would allot to your branches?

A. We did not have to determine it. The mills determined that for us as to the amount of allotment they gave us.

Q. I understand that initially the mills made their own allotment or allocation on the basis of what your entire organization had distributed in the past?

A. Basically, yes. We were restricted to a certain percentage of what we had normally over a given period. Book paper would be judged on the basis of one period whereas envelopes would be judged on another period, under the government regulations, with the result that those past periods as a whole used, were as a whole used to set up the allotments.

Q. To Jacksonville Paper Company proper, but how did you set it up in the fine paper department. What base period did you use for the basis of their allotment in turn to the branches?

A. The same period the mills alloted us.

Q. Same period?

A. That was the base period. When they first put us on allotment there hadn't been any allotment. We had the privilege of buying their stock. When they put us on allotment we asked for an increased allotment. Maybe this month we would not need an item which we had to take, where as another branch could use it.

Q. In the fine paper department, did you pay any attention to the amount of salesmen or the amount made by a particular salesman in fixing your allotment to the branches?

A. No. The branch as a whole.

Q. Did you pay any attention to the territory covered by the salesman and the population in the territory?

A. Yes; as much of a difference between the territory served by Orlando as compared with Miami, the proportion for example—

Q. That would in turn depend on the volume of business which the particular branch had done in the past?

A. Well, it will pretty well average up.

Q. Is news print a fine paper item?

A. Yes.

Q. Is it or not a fact that most news print is ordered in rolls?

A. No. In general, on the total production in the United States, that may be true, but in this territory, it is not true because a majority of roll news print—we sell as much of cut paper to customers in the State of Florida, which is fairly small dailies or weeklies about as much of our tonnage or approximately better than half is in sheets for the country papers, and usually there is one in every town.

Q. That is what they call sheet news?

A. Yes.

Q. Does your company supply the Bradenton paper by the Tampa branch?

A. Yes.

Q. Is it not a fact that sheet news is also printed up into newspapers?

A. Yes.

Q. Is that what it is bought for?

A. Yes.

Q. We mentioned Tampa and the Bradenton paper?

A. Sure.

Q. They also have, your branch there, has newspaper customers?

A. Yes.

Q. Miami?

A. That is right.

Q. Macon?

A. That is right. All newspapers—that is, all fine paper branches have newspaper customers.

Q. Do you know the names of the newspapers to whom your branches sell?

A. Not all of them. I can't remember all of them.

Q. I will ask you if you know the Plant City Courier?

A. Yes.

Q. Do you have them as a customer?

A. I know there is a paper there by that name that we used to sell in the past. I haven't any recent knowledge whether we are selling them.

Q. Kissimmee Gazette?

A. That is right.

Q. You have that customer?

A. Yes.

Q. Winter Haven Herald?

A. I did not know there was—I did not know the Herald is there. I think that is the one just got started down there.

Q. Winter Haven Daily News?

A. That is the new one. That is a bunch of ex-servicemen. I don't know who they are. I don't think they have been able to give them much of anything.

Q. You remember that newspaper there?

A. I don't know about that. I don't keep up with individual accounts.

Q. Florida Chief Publishers Company in Winter Haven?

A. Yes.

Q. Is a customer of the Tampa branch?

A. Yes; as far as I know, we sold him paper in the past.

Q. Which of those do you recognize as customers?

A. Definitely recognize them—yes, possibly two or three of them in the branch account. I could not say that they are customers.

Q. I will ask you one at a time, and I will ask you if you recognize them as a customer?

The Court:

If you want to get the information as to which of these country newspapers are customers of the paper company,

why don't you go ahead, if you have the information accurate in any form. I will stop this speculation of it.

Q. If you know, is the Apopka Chief a customer of the Orlando branch?

A. Apopka Chief has been a customer from time to time. Sometimes they purchase from us and sometimes elsewhere. That is not what we call a regular newsprint customer.

A.[Q.] Can you state, from your own knowledge, how many newspaper customers each branch has?

A. No, sir.

Q. What about Miami?

A. I may give you that approximately. I don't know who they sell that to.. I give them the newsprint and they proportion it out.

Q. Have you Tropical Publishing Company of Deland as a customer of your Orlando branch?

A. In Orlando?

Q. Yes.

A. Jacksonville customer.

Q. Ship out of Jacksonville?

A. Jacksonville.

Q. By the home office or by the Florida Paper Company?

A. Shipped by the Jacksonville Paper Company.

Q. Are shipping tags one item which your branches order from you specially?

A. You mean special orders or items of shipping tags?

Q. Special items.

A. Special items would come through Southern Industries the same as the regular.

Q. Do they?

A. Each of them keep them.

Q. Special items would be ordered special on special orders?

A. Requests.

Q. Do your branches all order that item?

A. As a rule.

Q. You have mentioned, I believe, envelopes of a special type?

A. Yes.

Q. How many special types of envelopes are there which you have to order special for your branches?

A. That would be impossible to order the special types of envelopes for special purposes, for the purpose of printing labels for use on citrus crates or hampers of beans and that sort of stuff, special finish.

Q. Does Florida Growers Press order that in any particular volume?

A. All the year around.

Q. Approximately how much volume in a year?

A. It would not be brought to my attention the figure on that. They have not been able to get anything like as much as they wanted under the mill's allotment to us. They could get it then obviously from other sources, anywhere from four cases to forty-five hundred or five thousand pounds at a time, when it is available.

Q. How frequently?

A. As fast as you could get it to them.

Q. Do you have other customers such as the Florida Growers Press who order special types of book papers or fine papers for similar purposes?

A. By "similar purposes" you mean printing labels?

Q. Vegetable labels, fruit labels and citrus?

A. You can use it for different types, different types of paper for that purpose, but during the last few years, it has been their policy to use whatever is available and, on a great many occasions, there might be something available that normally would not be a stock item which, I guess, would classify it as special.

Q. What type of customers, other than the Florida Growers Press, would use fine paper of that sort for labels and so forth?

A. Most any printer would make them.

Q. Fruit shippers?

A. Yes; printing plants.

Q. Does the Tampa office handle special labels for cigar manufacturers' labels?

A. Classified as box labels, a special type of label up there, a special finish.

Q. Does your Tampa branch have a number of such cigar manufacturers as customers?

A. They sold to brokers and cigar manufacturers. They sold to some printers who, in turn, furnished the manufacturers with the labels.

Q. We have been talking about Tampa?

A. Yes.

Q. Is it true in all your branches; each of the fine paper departments have printing shops? And press companies which use these types of paper, special paper?

A. Well, first off, they all would not want them for cigar boxes. That is, some labels can be used for other purposes. All branches would use some special paper and the regular stock label, to be true.

Q. Some of this special paper used for some things as booklets and chamber of commerce brochures?

A. Would not use label paper for that, as it is rough on one side and it is likely to be very rough.

Q. Do your branches in Florida have customers that order special types of paper for booklets and folders and chamber of commerce brochures?

A. Yes.

Mr. Downing:

Your witness.

(Ten minute recess.)

Cross Examination.

By Mr. Kurz:

Q. Mr. Ross, when you stated that Southern Industries Company furnished about six of the items carried in the fine paper department, did you mean by that, that that was all the items?

A. In six general classifications.

Q. Six classifications?

A. General classifications. For example, envelopes, there is probably two hundred and fifty or three envelopes which Southern Industries supply, five or six different kinds of legal tablets, which they would supply.

Q. In other words, when you mentioned that the fine paper department has from two thousand to twenty-five hundred items, you meant by that a certain number of envelopes and a certain number of—

A. Grades and classifications.

Q. Grades and classifications?

A. Yes.

A.[Q.] And the grades and classifications would be supplied to the extent of approximately six or so by Southern Industries?

A. Six or eight.

Q. How many items?

A. Individual items?

Q. Yes.

A. I don't know off hand because envelopes would run quite a few. It would not be a big percentage, but I would not know off hand just what the percentage would be, in the individual envelopes.

Q. You mentioned special orders received from various branches as cellophane bags?

A. Yes.

Q. What branches order those?

A. Most of them may order them from time to time.

Q. How frequently?

A. Not so often. There is no set rule on them. For instance, they have been out for the last three years and now they are becoming available again, and we had an order just the other day for some of those.

Q. In other words, about, for about three years you have not been able to supply any of those?

A. That is right.

Q. What about these special envelopes with special windows? Have you been able to supply those in the last few years?

A. Of some types, like regular glassine window, in special position, yes, from time to time. We have been able to get those, but cellophane window envelopes—regular glassine—we have been unable to get all of them.

Q. How many orders have you had for paper shoes, in the last three years?

A. I do not know. That is new in the coarse paper division. I know they had some orders for them.

Q. Of your own knowledge, you don't know anything about it?

A. That is right, but we did have an order.

Q. How do the special orders compare with your total volume of business in dollars and cents?

A. I would not have any actual figures in that connection without checking it up, but they would be a very small portion of the total volume.

Q. How would the volume compare in bulk with your total volume of the fine paper items?

A. It would be about the same proportion as to the dollars and cents relation.

Q. With reference to the allocation methods used, who does the allocating?

A. Well, the mills actually really do it.

Q. Who does it for the Jacksonville Paper Company?

A. I do.

Q. With reference to the sales of news print, is all of it in rolls?

A. No, sir. Part in sheets.

Q. Is news print in rolls used for any purpose other than printing newspapers?

A. Not that I know of.

Q. What about newsprint sheets?

A. Very little of it used for any other purpose.

Q. Isn't it used for dodgers?

A. Prior to the war it was. Everything in circulars printed during the war—very few of them, though.

Q. Did you sell M. G. Lewis Printing Company?

A. Yes.

Q. What did they use it for?

A. They printed a newspaper for the air base and I think from time to time they have printed some circulars

Q. How often do you go to the branches, Mr. Ross, personally?

A. Personally?

Q. Personally.

A. I don't go to them.

Q. How close do you keep in touch with their sales to customers?

A. I don't attempt to keep in close touch with them. The only contact I would have with them is when they would contact us here for some reason or other.

Q. You testified quite a bit about the sales made by branches to specific customers?

A. That is right.

Q. How did you get that information?

A. Requisitions and correspondence with the branches in cases when they receive an inquiry.

Q. Do you know what purpose the customers used the paper purchased from the branches for?

A. In some cases; not in all cases.

Q. You testified particularly with reference to label paper and Florida Growers Press?

A. That is a special sheet.

Q. That is a sheet which is rough on one side?

A. Normally, it is a sheet that they particularly used to paste on boxes. It is rough on one side, but it is what they call high finish, some higher finish than others, but normally, it is regular print paper.

Q. When was the last order you had from the Florida Growers Press?

A. Tampa had one in the last two or three months. I don't know.

Q. How often do they fill those orders?

A. Whenever we can get them executed at the mill.

Q. How often do you receive them from them?

A. Probably once every month to three months, or something like that.

Q. You testified that some of the paper purchases from the Tampa branch are used for cigar box labels?

A. Yes.

Q. How did you know that?

A. Because they specify paper for that particular purpose. It has a wood grain design on it.

Q. Who specifies that?

A. The Tampa branch, in sending the requisition in.

Q. Is that type paper used for any other purpose?

A. Where the box is rough.

Q. Boxes of some—

A. If anyone wanted a paper of that type.

Q. Is it sold by the Tampa branch to cigar manufacturers?

A. To the printer.

Q. Do you know what the printer does with it?

A. No. Only in cases.

Q. Do you know in any case what?

A. Yes.

Q. What?

A. Printing labels or bands for cigars.

Q. Who?

A. The Hillsboro Press buys special paper for making cigar bands. We did not get them the last two or three years—could not get it in the last two or three years. It was not made, one item restricted by the government.

Q. In the last two or three years you don't know of any such orders?

A. Any specifically, no.

Q. You haven't been down there to see who used it and who printed it, or what was done?

A. No.

Q. With the paper?

A. No.

Q. Who purchases paper from Tampa for the purpose of printing resort booklets?

A. What?

Q. Resort booklets?

A. Comes from the various printers who receive them.

Q. Is that a type of paper that is used for other purposes?

A. Yes; it could be used for any type of booklet giving illustrations.

Q. Have you ever been down there to see what the paper has been used for?

A. Not any specifically—

Q. Do you know of any order that you got personally for printing resort booklets?

A. All I know, when they specify on the requisition, they say it is for a St. Petersburg booklet. That is the only information.

Q. And that is the only information you have?

A. Yes.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Downing:

Q. You mentioned the Hillsboro Press as a customer?

A. Yes.

Q. Is that the same customer as the Hillsboro Printing Company?

A. Yes; Hillsboro Printing Company.

Q. You say, for the last two or three years you have not been able to get a certain kind of paper for them?

A. Yes.

Q. Are you able to get it now?

A. It is in the restricted list. It probably would come in.

Q. Have they placed any orders. Have you got any orders for them yet?

A. No.

Q. Haven't taken any?

A. That is right.

Q. Now, with reference to your allotment or allocation?

A. Yes.

Q. You said you did that yourself?

A. Yes.

Q. Allocation to the branches?

A. That is right.

Mr. Kurz:

He is not answering the question.

Mr. Downing:

Don't shake your head. Answer the questions so the Court reporter can get the answers.

Q. Is that a system or scheme which you followed, one you devised yourself, or are you following the instructions of a superior?

A. A combination situation, if you know. It was necessary to send the mill those specifications as to what the individual branch requirements are, and as to what items some of them might be.

Q. I understand it is your responsibility to make the allocation?

A. To distribute it evenly amongst the branches.

Mr. Downing:

That is all.

Re-Cross Examination.

By Mr. Kurz:

Q. Does Mr. Adams have anything to do with the allocation of paper?

A. That is right. We work together. He writes some of them sometimes and I write some.

Q. Who has the final say?

A. Mr. McGehee.

Q. You and Mr. Adams—

A. Work it out together.

Q. Then Mr. McGehee would settle any difference between you?

A. That is right.

Q. Would Mr. Wilford in Tampa know more about the orders placed by the Tampa branch and the uses of the paper, than you?

A. On the printing paper?

Q. Yes.

A. I think not. He would know more individual ones. Mr. Watts would know more about the special orders.

Q. Mr. Watts would know?

A. Yes.

Mr. Kurz:
That is all.

Re-Direct Examination.

By Mr. Downing:
Q. What department is Mr. Stewart in in Tampa?
A. Fine paper.
Q. Under Mr. Watts?
A. Fine paper.

Mr. Downing:
That is all.

Mr. Downing:
May we ask now that we have a partial return of the subpoena duces tecum?

The Court:
I see they have brought some records in here. Mr. Downing, I wonder if we would save time if the Court recessed and you went through the records to see what records you want to introduce.

(Discussion off the record.)

The Court:
Open the box, Mr. Reinoehl, and see what we have in there.

(At the direction of the Court, Mr. Reinoehl opened a carton.)

118 Thereupon, A. S. REINOEHL was called as a witness on behalf of the plaintiff and, being first duly sworn, testified as follows:

By Mr. Downing:

Q. Have you got here the accumulated hours record?

A. I have.

Q. It is—

A. For Jacksonville.

Q. Each of those volumes contain them

A. That is true.

Mr. Downing:

We ask that these be marked for identification as number 1.

(The books were marked Plaintiff's exhibit number 1 for identification.)

Q. Have you produced here, Mr. Reinoehl, the records which contain the bonus payments?

A. No, sir. I only have—I don't have a bonus record. I don't have it and I don't believe that it is here.

Q. Will you produce those tomorrow?

A. Yes.

Q. I believe you said you did not have any record of the accumulated hours which you have for your branches?

A. No.

Q. You do not keep a copy of the accumulations on the branch employees in this office?

A. No.

Q. Have you produced here all the applications for employment and all memoranda with reference to terms of employment of your employees?

A. No, sir.

Q. Will you produce those tomorrow?

A. Yes, if it is necessary, but it will take time. They consist of about—all of the personal files show those records and the files consist of twelve full sized drawers.

Q. By way of illustration, I will ask that you produce one representative file from each branch and one from the home office. We can demonstrate from the record in that way. We should like to ask specifically for the record, the file of Margaret Oetgen of Savannah?

A. I will make a note of that.

The Court:

Have you any others?

Mr. Downing:

I can specify that we can indicate to Mr. Reinoehl later.

The Witness:

A representative file from Jacksonville and each of the branches and specifically to include one on Margaret Oetgen.

Mr. Downing:

That is right.

The Court:

That will not be a serious task.

Mr. Downing:

And also Florida Paper Company.

The Court:

You might make a note of the first request. That is the bonus state record.

The Witness:
Yes.

(By Mr. Downing):
Q. Have you produced here any letters or demands made of employees for settlement of the accumulated hours account?

(Mr. Reinoehl):
A. No, sir.
Q. Are there any?
A. No.
Q. Another item we asked for and one that has given me the most trouble and that is letters, writings, and memoranda covering all the relations, understandings and agreements with your customers since June 3, 1943, for the purchase or delivery of goods over specific periods of time which call for regular or periodical deliveries of goods. Have you produced any such records as those?
A. No.
Q. Do you have any?
A. If there are any, I don't know it. That is in the sales department.
Q. You don't know?
A. I don't know anything about that.
Q. Have you made any search for them?
A. I have made inquiries.
Q. Of whom?
A. Mr. Hall.
Q. And not Mr. Ross?
A. No.
Q. A subpoena for the production of all orders, bills and invoices since June, 1943, covering goods ordered for specific customers at Orlando, Lakeland, St. Petersburg, and West Palm Beach, including particularly printed items. Have you produced any such items as that?

A. No.

Q. Are there any?

A. No.

Q. Will it be possible for you to produce those?

A. Only by searching twenty or twenty-four letter size files consisting of all the purchases made for the past several years.

Mr. Downing:

Your Honor, we can agree to waive that item in view of the testimony of Mr. Hall and Mr. Ross and the testimony produced by deposition.

The Court:

And you do waive it?

Mr. Downing:

I do waive it.

Q. What are the other books you have produced here?

(Mr. Reinoehl):

A. Payroll records, payroll sheets in Jacksonville and branches.

Q. All the branches?

A. Yes.

Q. Covering what period of time, if you know?

A. They, I believe, cover the period from August 29, 1941, to April 16, 1946.

Q. Do I understand that these payroll records do not show the accumulated hours?

A. No, sir.

Q. They don't show the bonus payments?

A. No.

Mr. Downing:

Would you prefer, Your Honor, for these payroll records to remain temporarily, and it may become necessary to refer to them at later stages of the trial. We do not, at this time, propose to offer them in evidence. I do not believe it will be necessary to offer them.

That is all the examination I wish to make of Mr. Reinoehl in response to the subpoena. I do wish to call him as a witness.

The Court:

Now?

Mr. Downing:

Yes.

The Court

Take the stand.

Mr. Downing:

Preparatory to his examination, and in order to get it before the Court, the background of the accumulated hours, the government offers in evidence from the original transcript of the original trial of this case Mr. Reinoehl's testimony, beginning at the bottom of page 315 in the printed record, the fourth line beginning "Mr. Downing" and ending in the printed record on page 334 at the bottom of the page, and in the stenographer's transcript in the District Court beginning on page 302 and ending at the bottom of page 321;

Also, from Mr. Reinoehl's testimony on recall, his testimony beginning on cross on page 548 of the printed record with the cross examination and ending on page 557 of the printed record, just before colloquy in the middle of the page, and in the stenographer's transcript, those pages are, at page 536, beginning the cross ex-

amination at the bottom of the page and ending on page 547 with line five just before the colloquy.

The Court:
Whose testimony is that?

Mr. Downing:
Mr. Reinoehl recalled. He was called to the stand several times in the previous trial as a witness for both sides. That testimony, I might state, gives the entire history of the adoption of the accumulated hours plan, how much money in it, how it came into being and how it operated generally to the time of the trial, and I apprehend, it will be much more convenient this way to get it into the record than asking Mr. Reinoehl about it.

The Court:
It relates specifically to that. And the testimony you are now taking from the old record and making a part of this record is only the testimony of Mr. Reinoehl, and explanation of the accumulated hours plan.

Mr. Downing:
That is right.

The Court:
It will be much more convenient to the Court if you can handle it that way, and the Court reporter will include it in his transcript here. Is that right?

Mr. Downing:
Yes.

The Court:
We will consider that as a part of the transcript of the record as follows:

Mr. Downing:

Q. Is it the present policy of the company to pay a full salary to a salaried employee when he may lose time due to illness or for vacation or similar causes?

A. Yes, sir.

Q. Was that also the policy before April 27, 1940?

A. Yes, sir.

The Court:

Do you have reference to all employees, or those that are on a salary?

A. All employees on weekly salary; yes. Not those who are employed entirely on an hourly rate, as might be the case of outside labor. On extra labor voucher. Just those on regular payroll.

Q. Do you have any regular employees who are on an hourly basis?

A. No, sir, not regular employees.

Mr. Downing:

Q. Mr. Reinoehl, are you familiar with the letters which were sent out and delivered to employees on or about April 24, 1940?

A. Yes, sir.

Q. Did you prepare those letters?

A. No, sir.

Q. Did you deliver any of the letters?

A. Yes, sir.

Q. To whom? Do you remember?

A. To some of the employees in the Jacksonville office. I don't remember which ones.

Q. Did you tell them to report back to work on Monday?

A. I did not tell them to report to work. I told them they would apply for a position. If we needed their services, we would consider them.

Q. Did they all report back to work on Monday?

A. I think so.

Q. Did you interview any of them?

A. They asked as to the employment. We didn't go through the formality of the usual interviews as to their past experience or qualifications, because I knew what that was.

Q. What did the interview consist of?

A. As to whether or not we had an opening and had need of their services.

Q. Do you remember any specific employees whom you interviewed?

A. Well, there were several. I don't remember the specific ones.

Q. Did you interview Mr. Moran?

A. I just stated I didn't remember specifically which ones.

Q. Did you interview Miss Fullington?

A. That same statement still holds good.

Q. Or Mrs. Ruby Jones?

A. The same statement still holds good.

Q. You recall no particular individuals?

A. Sir?

Q. You recall no individuals particularly?

A. That is what I stated.

Q. So far as you know, did all of the employees, without exception, report back to work on Monday?

A. I think they did.

Q. All were immediately put to work?

A. Yes, sir.

Q. Who, if you know, advised them what their new salaries would be?

A. I think I gave them the schedule.

Q. Did the schedule contain anything other than the total number of hours they were supposed to work in a week?

Mr. Kurz:
Objected to on the ground the schedule would be the best evidence.

Mr. Downing:
As I recall it, we asked for the schedule.

The Court:
Overruled.

A. They were given copies of the employment notice, which gave the number of hours. The rate per hour for forty hours. The rate per hour for additional time above forty hours.

Mr. Downing:
Q. Mr. Reinohl, did the notice that was given at that time contain anything other than the total number, weekly, of hours that were supposed to be worked?
A. Yes, sir.
Q. Was an individual notice handed each employee?
A. Yes, sir.
Q. Was any general notice or bulletin posted on a bulletin board?
A. There was a general bulletin issued.
Q. Do you know whether individual notices actually reached each employee?
A. I have reason to believe that they did.
Q. I am asking you now as to your personal knowledge, Mr. Reinohl.

The Court:
He has answered it.

Mr. Downing:
Q. Generally, Mr. Reinohl, were the employees employed for the same salary they had received before?

A. In no instance was it any less.

Q. Generally, was it the same?

A. The same or a little more.

Q. In a few instances did there result raises of a few cents in the weekly salary?

A. From a few cents to probably a dollar or two.

Q. Are you the representative of the company who worked out the details of the arrangement?

A. Yes, sir.

Q. As to the men who, before that time had worked the regular schedule,—the regular daily schedule from eight to six, and from eight to one on Saturdays, with an hour off during the first—in other words men who worked a work week of fifty hours, when they worked their regular daily schedule, will you explain to the Court the basis you used in preparing the new arrangement? New agreement?

A. You mean as to the number of hours set up in the new agreement?

Q. Just describe in general how you worked out the plan.

A. We figured the approximate number of hours required for the regular duties.

Q. Did you assume that it was 54 hours for the men?

A. In some instances.

Q. Even though they regularly worked the fifty hour week?

A. In an office it is hard to say definitely that nobody ever works more than fifty hours a week. We took that into consideration.

Q. And you adopted the figure fifty-four. Does that represent six full days of nine hours each?

A. Yes, sir.

Q. Now, describe how you worked out the new arrangement with your men, say who earned $25 a week in the past. Will you explain that to the Court.

A. If we set him—if his work required a ffity-four hour schedule, his rate of pay was based on forty hours at straight time and the additional fourteen and a half hours at time and a half time.

Q. You mean actually fourteen hours?

A. Actually fourteen hours, yes.

Q. How did you work out the arithmetical calculation to arrive at that rate of pay?

A. Well, it is comparatively easy. Fourteen hours at time and a half would be equivalent to an additional seven hours.

Q. That would be—

A. It would be equivalent to sixty-one hours straight time for fifty-four hours' work.

Q. You divided that into twnety-five?

A. Yes, sir.

Q. What was that result? What did that represent?

A. The base pay.

Q. The base pay?

A. Yes.

Q. Then how did you set that up?

A. That rate at—

Q. On the books?

A. That rate at forty hours, one and a half times that seven for the additional hours for which the schedule called.

Q. Suppose it did not work out exactly even.?

A. Well, it would probably figure a little more.

Q. You mean as a result of that they got ten or fifteen cent raises?

A. It would make a little difference. You couldn't make them figure out exactly right in every instance, no.

Q. Except for the small raises, did it result in the same salary they got before?

A. I would say yes.

Q. Now, assuming you had a man of whom you estimated that a sixty hour week should be required. Would you figure out his salary in the same manner?

A. Yes, sir.

Q. And under that plan then his salary, also after the arithmetic was gone through, would be exactly what it was before?

A. Either that or—

Q. Either twenty-five dollars or a few cents more?

A. That's right.

Q. Now, as to the women in the office, the ladies who worked ordinarily from 8:15 or 8:20 to six, and from 8:20 to one on Saturday, which I believe equaled forty-eight hours also. Did you set them up at forty-nine and a half hours?

A. Yes, sir.

Q. Did they also, after the arrangement was worked out, receive the same salaries they had received before?

A. The same or a little more.

Q. A few cents raise, possibly?

A. Yes.

Q. Now after the arrangement was put into effect, did the employees continue to work the same number of hours, generally, that they had worked before?

A. Yes. Unless it was necessary for them to put in a little overtime. A little extra time, I would say, to complete their work.

Q. But usually they worked the same hours they had worked before the arrangement was put into effect?

A. Yes, sir. Because the hours before the arrangement was put into effect fluctuated to some extent. There might be some fifty hour schedule, or to take fifty-four hours to complete their week's work.

Q. Generally, before April 27, was it customary for any employees to leave their jobs or leave the office before six o'clock in the afternoon?

A. Only on Saturday.

Q. I mean in regular week days.

A. No, sir.

Q. And on Saturday was it ever customary for them to leave before one o'clock in the afternoon?

A. Not as a general practice.

Q. Generally since that date, has it been customary for employees to leave the office before six o'clock on any week day?

A. Generally the week days, except on special cases.

Q. On Saturday had it been customary for them to leave before one o'clock?

A. Not customary, but it has occasionally happened, yes, sir.

Q. After April 29, at what point did employees become entitled to overtime compensation above their regular salaries?

A. At the point above the schedule for which they were paid.

Q. A point above the number which you had set up for them?

A. Yes, sir.

Q. In other words; a man who had been set up for fifty-four hours would not receive any compensation above his regular salary until after he had worked more than fifty-four hours?

A. No, sir, because he had already had time and a half payment for everything above the forty hours.

Q. In the case of the ladies who had been set up at forty-nine and a half hours, did their extra compensation above their regular weekly salaries commence above forty-nine and a half hours?

A. Yes, sir. For the same reason.

Q. Between April 29, 1940, and a date on or about August 1, 1940, did the company pay overtime compensation to some of its employees who had worked beyond the number of hours set up on the books?

A. Yes, sir.

Q. After August 1—the date of on or about August 1, 1940, had such overtime compensation been paid?

A. There have been some cases, yes, sir.

Q. Are you referring now to the truck drivers for whom adjustments were made?

A. No, sir.

Q. What other types of employees do you have in mind?

A. Two employees in the Mobile branch I have in mind right now.

Q. What was the occasion for their receiving overtime compensation?

A. Because they had earned it. It was due them.

Q. They had no accumulated hours charged against them?

A. They had, but they had no accumulated credit hours on the records. They had been used.

Q. Do I understand from that that the accumulated hours had already been used up?

A. Yes, sir.

Q. And they had gotten ahead of them, ahead of their accumulated hourly record?

A. Yes, sir.

Q. Are they the only two you can think of?

A. They are the only two I think of just now. There may have been more.

Q. Will you, at this point, explain to the Court when that accumulated hourly record was set up and what it purported to show?

A. The record was set up on August 1, 1940, and actually shows the difference between the number of hours that have been paid for on the basis of the schedule we referred to and the time actually worked as shown by the time sheets that had been signed by the employees.

Q. What employees in the main office keep that record of hours?

A. J. H. Chastain.

Q. Is that under your supervision?

A. Yes, sir.

Q. Did the company notify all of its employees at the time it commenced this accumulated hourly record?

A. I am sure that they were notified, yes. I know the branches were, and I am sure the home office employees were notified verbally.

Q. You mean by the branches, the manager of the branch was notified?

A. Either the cashier or the manager, I wouldn't say which. They were notified by letter.

Q. You don't know whether all employees were notified, do you, Mr. Reinoh'?

A. I am sure they were, but—

Q. How are you sure?

A. From reports that I have had from the branches.

Q. From the employees?

A. From the cashiers of the branches.

Q. Have you received any reports from the employees?

A. I have, some, yes, sir.

Q. Have you received any reports from the employees of the main office and warehouse?

A. Not in writing, no, sir.

Q. Isn't it true that the knowledge that the employees,—such knowledge as the employees may have received, was indirect? Through hearsay?

Mr. Kurz:

That calls for an opinion of the witness, your Honor. As to what hearsay is. I think that is even troubling the lawyers.

Mr. Downing:

Q. I will confine it to indirect, then. Was not such knowledge as they may have acquired, indirect?

A. I don't think so.

Q. Between April 29, 1940, and August 1, 1940, did any employees receive their usual vacations?

A. I believe so.

Q. Did they receive their full salaries for the vacation period?

A. Do you mean they received their full salary without any deductions, or just what do you mean by that question?

Q. In the period, April 29, 1940, the date of the new arrangement, down to the date when the accumulated hourly record was begun, did the employees who took vacations receive their full weekly salary during the time they were on vacation?

A. They did, except to the extent there was an adjustment made as to overtime that had been made in the meantime. Of course the law does not compel a vacation. If you have paid for vacation time previously, then it is in order to make that adjustment. Vacations are entirely optional with the employer.

Mr. Downing:

I ask that the witness' answer be stricken. It is purely argumentative. It states his conclusion.

The Court:

Didn't you ask for it?

Mr. Downing:

I asked the question but the answers I got is not responsive. I am simply asking the witness to answer the question I asked.

The Court:

Read the question, Mr. Reporter.

(The question was read, also the answer.)

Mr. Downing:

From there on it is not material.)

The Court:

I will leave it stand.

Mr. Downing:

Q. Then do I understand from April 29 down to the date of the accumulated hours record, it was customary to deduct from the vacation salary, the amount of overtime compensation that had been paid since April 27th?

A. Yes, sir.

Q. Was that generally followed after August 1, 1940?

A. No, sir.

Q. You have referred—you have endeavored to explain why you followed that policy in between these dates. Why did you not follow it after August 1, 1940?

Mr. Kurz:

Your Honor, I think there is no requirement in the Act, or elsewhere, that vacations should be allowed with pay to employees. If a vacation with pay is allowed, whether will full pay, or deductions are made. I think it is in the discretion of the company, and what the policy was generally, would be irrelevant. The statement has already been made of what has been done.

Mr. Downing:

This is relevant on the artificiality of the reemployment arrangement, to show that it was not actually a contract at all. This evidence all has a material bearing on the validity and regularity of that supposed or alleged agreement. I am trying to get the evidence before your Honor—

The Court:

Isn't that for the Court to decide?

Mr. Downing.

I think that covers it.

The Court

Was there a change in the method of paying these men for vacations after a certain period from the method followed theretofore?

A. After August 1st they received their full vacation period without regard to any overtime that was paid.

Q. Prior to that time had there been any change in the rule?

A. Only from August 1st.

Q. Between those periods, there had been adjustments in the overtime, with their vacation pay?

A. Yes.

The Court:

I think that covers it.

Mr. Downing.

Q. Was that at Mr. C. G. McGehee's direction, Mr. Reinohl?

A. What portion of that?

Q. From April down to August.

A. You mean adjustment as to vacations?

Q. Yes.

A. I am not sure I had specific instructions as to that. I believe we discussed it, but I wouldn't say definitely at his direction.

Q. Was it at his instruction that you abandoned the practice after August 1st?

A. No, sir.

Q. You just hit upon that yourself?

A. Yes.

Q. Now, after August 1, 1940, did some of your employees take their annual vacations?

A. Yes, sir.

Q. Were those vacation hours charged on the accumulated hour record?

A. Yes, sir.

Q. Since August 1st, have there been some employees who have been ill for some long period of time? For example, Mrs. Virginia Harper, was she out for some time?

A. Yes, sir.

Q. And she received her full salary for the time she was out?

A. Yes, sir.

Q. Were her hours charged against her on the accumulated hourly record?

A. Yes, sir.

Q. During the time she was out?

A. Yes, sir.

The Court:

I am not quite sure I understand this accumulated hour record. Just what was the system on that?

A. We kept time sheets, time records, on all employees They were all paid on an hourly rate. A schedule is set up for a certain number of hours. For example, if they were on a fifty-four hour schedule and they get through with their work and only work fifty hours, they have been actually paid for fifty hours straight pay —they have been paid for time which they had not worked.

Mr. Downing:

Q. Since August 1st, 1940, have any employees terminated their employment with the company?

A. I think so.

Q. Was any settlement required of those employees for the hours that had been charged against them?

A. No, sir.

Q. Explain how the accumulated hour record is credited with the hours the employees worked over and above the number set up on the books?

Mr. Kurz:

Your Honor, that assumes something that has not been established. That there are hours worked that are not set up on the books. I do not think the question is proper.

Mr. Downing:

I will restate it.

Q. Will you explain, Mr. Reinohl, how the present record of accumulated hours is credited in cases where an employee works beyond the number scheduled for him on the books of the company. The weekly number.

A. He is given credit for the full number of hours that he has worked.

Q. If there is any balance charged against him on the debit side of the record, does he receive any additional compensation?

A. Yes, sir.

Q. Well, how does he receive it? In money?

A. In money.

Q. I think you have misunderstood the question I am getting at, Mr. Reinohl. If there is a larger number charged against him than the number he has worked in excess of his book schedule, is not the only entry a credit against the acumulated number?

A. No, sir. If he has worked more hours than his schedule provides for, and has used up all his accumulated hours as shown by the records during that same week, he is paid for whatever balance is due him.

Q. I was asking about a situation where the accumulated hours had not been used up. Will you explain how the record is made in that case.

A. I don't think I exactly understand your question.

Q. I hand you the record of accumulated hours, identified by you as exhibit 13, Jacksonville Paper Company. I mentioned, I think, Mr. Moran on one other occasion. For the week ending April 19, 1941, it appears that you have charged against her a total accumulated hours of 225 hours and five minutes. If Mr. Moran in the next week worked, say, three hours beyond the number scheduled on your books for his scheduled number, what entry would be made on the accumulated record?

A. This record shows the scheduled hours. It shows the number of hours worked. If the number of hours worked is in excess of the scheduled hours, it would reduce the accumulated credit hours as appear on the record.

Q. Then the only entry is a credit against the hours charged against him in that case?

A. Yes, sir.

Q. That is the situation I was inquiring about from the beginning.

A. Yes.

The Court:

You mean this entry on the accumulated hours record?

A. Yes.

Mr. Downing:

Q. In such a case does the employee receive any overtime compensation above his regular salary?

A. Not if he has a record of hours that has already been paid for.

Q. We were talking about the instance just discussed.

A. He has been paid for those number of hours, and has not worked them.

Q. Will you just answer my question, Mr. Remohl? Would he receive any overtime compensation during that week above his regular salary?

A. Not during that week because he has already been compensated.

Mr. Downing:

Your Honor, I ask that the witness' conclusion be stricken. The evidence does not show he has been compensated for anything.

The Court:

Suppose, Mr. Witness, that Bill Grimes here was scheduled to work fifty-four hours, and Bill Grimes not only worked that fifty four hours, but he worked four more hours, fifty-eight hours.

A. Yes, sir.

The Court:

What would happen about those four extra hours?

A. Well, if on the next line it shows he already had credit hours accumulated from previous week, and that extra four hours would be deducted from that accumulation.

The Court:

Q. Of a prior week?

A. Yes, sir. If he had no accumulated hours, he would be paid in cash for that four additional hours.

The Court:
I think that answers the question.

Mr. Downing:
Q. Has it ever been customary to credit those hours at time and a half the number of hours?
A. No.

The Court:
These four hours extra in the illustration I have just given you; Bill Grimes had worked four hours extra and he has no accumulated credits. And he worked four more hours than his schedule. Would you pay him straight time or time and a half?

A. He would be paid time and a half for that additional four hours.

Mr. Downing:
Q. Time and a half the rate you had set up on your books for him?
A. Yes, sir.
Q. The rate you established by adding one-half the number of overtime hours to the total schedule, and dividing into the weekly salary?
A. The rate that we have determined by using that method, yes.

Mr. Downing:
Will your Honor excuse us a minute?

The Court:
I did not hear that last answer.

The Witness:

The rate that we have determinel by using that method, yes. Which is the base rate that we have determined at time and a half.

Cross Examination.

By Mr. Downing:

Q. Mr. Reinohl, the payrolls which you state were made up a basis of those schedules: As I understood your testimony yesterday, or the day before, those payrolls are customarily made up before the record of any time is received from the branches?

A. That is correct.

Q. When the time records are received from the branches, do they frequently disclose that the employee worked a different number of hours than is called for on the schedule?

A. That information was shown on the accumulated time records, yes, sir.

Q. That does not answer the question, Mr. Reinohl.

Mr. Downing:

Will you read the question, please, Mr. Reporter?

(The question was read.)

A. Yes, sir.

Q. And the payroll is made up to exhibit direct that the particular employee worked the number of hours specified on this schedule?

A. The payroll is made up to exhibit that the employees are paid for the hours indicated by the schedule.

Q. Is the only record of hours on the payroll the total number of hours shown by these schedules?

A. I don't get your question.

Mr. Downing:

Will you read the question?

(The question was read.)

A. We have time sheets.

Q. I am asking you about the payroll records, Mr. Reinohl. Is not the only record of hours shown on the payroll, the weekly payroll, this number which is carried on the bulletin?

A. Yes, sir.

Q. The payroll contains no record of the hours actually worked during the particular week?

A. The payroll itself does not.

Q. I have understood your former testimony to be the employees purportedly employed under this agreement do not generally work the number of hours set up in the bulletin?

A. The employees working on this schedule do not always work that number of hours, no, sir.

Q. Have you not previously testified in your deposition taken in Jacksonville that the employees do not generally work the number of hours called for in the schedule?

A. I am not sure just how I worded that. The answer is practically the same. Has the same meaning.

Q. I will ask you if in your deposition taken in Jacksonville on March 5th, the following question was asked you and if you did not answer as follows: (Page 223)

"Q. Do I understand that customarily the salaried employees do not work the scheduled number of hours?

"A. Do not always work the number of hours for which they are paid."

The further question:

"Q. Is it not true that they seldom work the scheduled number of hours?

"A. Well, there are cases when they do work the scheduled number of hours."

Do you recall that testimony?

A. Yes, sir.

Q. The further question:

"Q. They are not infrequent?

"A. Well, it is not a regular practice. They are not regularly required to work this scheduled number of hours."

Is that correct?

A. That's right.

Q. "Generally, are not the actual hours worked less than the scheduled hours?

"A. In a good many cases, yes."

A. Yes, sir.

Q. As I understood your testimony yesterday or the day before, you also stated that the salaried employees hired, or purportedly hired, under the new arrangement, still continued to work generally the same number of hours they had before?

A. The new employees did, yes, sir.

Q. And generally they did not work the number of hours purportedly called for by the schedule?

Mr. Kurz:

Your Honor, there has not been anything brought out in this examination, unless counsel is going to re-open and re-examine the witness on the points he already covered.

The Court:

Confine your questions to the cross. I do not think that is in cross, Mr. Downing.

Mr. Downing:

I understood your Honor asked the witness a number of questions—

The Court:

Purely and simply to find out if that schedule or notice of it was brought home to the employees, was all.

Mr. Downing:

It occurred to me, or I seem to remember that the payroll was made up on the basis of this schedule and it lasted over a period of time in the usual course of business.

The Court:

It was all for the purpose of determining whether the employees would likely have knowledge. That was all: For the purpose of determining whether or not it would be admissible in evidence or whether the employees, in the usual course of business, would be expected to have knowledge of the existence of that statement. That was the only purpose of my questions.

Mr. Downing:

Q. Mr. Reinohl, have any changes been made in these schedules since they were made out and sent out to the branches?

A. Yes.

Q. What were the occasions for those changes?

A. There were increases given to the employees.

Q. Did they take on some new job or new type of work?

A. Well, not necessarily.

Q. Why was it necessary to change the schedule of hours?

A. They were being paid for an additional number of hours.

Q. Did they work an actual number of hours, Mr. Reinohl?

A. No, sir.

Q. Were they told they were going to have to work an additional number of hours?

A. They were given a copy of the schedule showing the required number of hours, yes, sir.

Mr. Downing:

The answer is not responsive and I ask the Court to strike it.

The Court:

Motion denied.

Mr. Downing:

Q. Mr. Reinohl, were the employees notified at the time of the raise that they would be required to work additional hours?

A. That information was shown at the time of the increase, yes, sir; on their payroll change notice.

Q. Have you any schedule or notice present which purports to give such a notice?

A. No, sir.

Q. Do you recall the depositions that you made, the testimony you gave, or the deposition on that point, Mr. Reinohl?

A. I don't recall it.

Q. —In Jacksonville, on March 5th.

A. I don't recall just what it was.

Q. You don't recall your testimony in the deposition on that point?

A. No, sir.

Q. I will ask you if you recall these questions and answers, beginning on page 244:

"Q. Have any of your salaried employees been raised since April 27, 1940?

"A. Yes.

"Q. Has that usually been accompanied by adding hours to their schedule?

"A. They were paid for additional hours on the time and a half rate.

"Q. Additional hours which they did not work?

"A. Yes.

"Q. Has any raise occurred when additional hours were not added to the schedule?

"A. I think there have been.

"Q. What was the reason for that difference, or distinction, if you know?

"A. I don't recall specifically any of those cases.

"Q. What was the reason, if you know, for increasing the scheduled hours in the above cases?

"A. It was simply a means of increasing their pay by paying them for additional hours."

Do you recall that line of questioning?

A. Yes, sir.

Q. Do you recall this question and answer:

"Q. Was it contemplated, if you know, that the employee would work additional hours?

"A. None of the employees are required to work their full scheduled hours. They are paid at the regular rate and one and a half of the scheduled hours even though they do not work the full hours.

"Q. At the time the raises were given, was it contemplated that the employees would be required to work additional hours?

"A. No."

Do you recall that testimony, Mr. Reinohl?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Do you recall this question and answer:

"Q. To the contrary, was it assumed they would work the same number of hours as formerly, for the weekly salary?

"A. Yes."

Mr. Kurz:

Now, if that is for the purpose of impeaching the present testimony of the witness, I think counsel should be confined to that point and not read the whole deposition page by page, and ask what occurred.

Mr. Downing:

I think all of this bears on the testimony which Mr. Reinohl gave here, which is not similar to that which is given on his deposition. He now recognizes the correctness of the testimony given on his deposition.

The Court:

To what are you directing this inquiry? I do not get the significance of any very fatal difference in the testimony.

Mr. Downing:

The witness tried to give the impression, your Honor, that the employees were all notified when they got their

raises that they were going to have to work longer hours. His testimony under deposition indicates the contrary. There was no contemplation that the employees, getting more money, would be required to work any more hours than formerly. That is quite different from his deposition.

The Court:
He is testifying about notice now.

Mr. Downing:
At the particular point, he was testifying as to whether the employees were notified they would be required to work longer hours for the increase in pay.

The Court:
I do not think it is particularly important.

Mr. Downing:
That is all.

Re-Direct Examination.

By Mr. Kurz:
Q. Mr. Reinohl, in connection with these questions that have just been asked you, was that increase in pay a voluntary increase made by the company?
A. Yes, sir.

Mr. Downing:
Objected to, whether it was voluntary or not; it has no bearing on any issue in this case.

Mr. Kurz:
I think the company has the right, if it wants to, to pay more wages than the Wage and Hour law calls for. That isn't an act which prescribes a fixed rate of pay.

The Court:
Go ahead. Overruled.

Q. And in connection with that, I believe you stated a record was kept of the accumulated hours.
A. Yes, sir.
Q. What was the occasion for keeping such a record?

Mr. Downing:
Your Honor, I object to this. This was all gone into day before yesterday with this witness.

Mr. Kurz:
Mr. Downing, I let you examine your witnesses and—

The Court:
He is on cross examination.

Mr. Downing:
He is a witness for the defendants. This matter was inquired into—

The Court:
It was all testimony you brought out.

Mr. Downing:
Yes, and counsel cross examined at great length on this same point; accumulated hours.

The Court:
What was the question?

. . . The question was read.

The Court:
Wasn't that gone into pretty thoroughly yesterday?

Mr. Kurz:

It may have been, your Honor. I don't exactly recall on that point. I don't expect to pursue it further, except I want to show the reason for that accumulated hour provision was this very bulletin No. 4 which provides for that, which has been introduced here and is what we contend.

The Court:

I will permit him to answer the question. Were you trying to comply with Bulletin No. 41? Was that the purpose?

A. Yes, sir.

The Court:

Did you think you were doing that?

A. Yes, sir.

Mr. Kurz:

Q. Were the employees advised at the time that they would be required to work the additional hours compensated for, if the occasion should require it later on?

A. Yes, sir.

Q. On cross examination just now you stated that the payroll was made up on the schedule of hours shown on this schedule, Exhibit B. If the employees worked any overtime as shown by the time records kept of the various hours, how was that overtime compensated for?

A. If they had no accumulated credit hours, they were paid for at the branches during that same week in which the overtime was worked, at the rate of time and half.

Mr. Downing:

There is one other portion from this record that I think it will be necessary for us to offer and that is the testi-

mony of Rose Allen which appears in the printed record beginning on page 358 and ending on page 366. We offer all of her testimony, direct and cross.

The Court:
What does it relate to?

Mr. Downing:
To a situation at Tampa which followed right on through on the Florida Growers Press account, what they used the paper for—brings the history right on through from that time until now, in connection with the testimony of Mr. Ross, which shows it continued, on those citrus labels which were printed for the Florida Growers on paper bought specially from the Tampa branch.

The Court:
Any objection to that?

Mr. Kurz:
The only objection is this, Your Honor. We are dealing here with the violation here of an injunction order and I think that the matters which transpired back in 1941 prior to the date of that order, are not very illustrative of the present situation.

The Court:
Is there anything in that would be objectionable or inadmissible in this case. Are you familiar with that testimony?

Mr. Kurz:
I have not—

The Court:

Suppose you check it yourself and see. Mr. Downing has just explained the reason why he offered this testimony, and it is to save the net necessity of proving it otherwise.

Mr. Kurz:

May I make this suggestion? That I reserve my objection until morning.

The Court:

You may reserve your objection until tomorrow morning. You can make it and withdraw it. I will act on it.

Mr. Downing:

I should like to state it shows the knowledge that the defendant had of the use that was being made of that special type of paper, printing of citrus labels and other labels on citrus boxes shipped all over the country.

The Court:

They have already testified to that in this case.

Mr. Downing:

I want to show that knowledge all the way back, your Honor.

For the record, the pages in the stenographer's record in the District Court are as follows: On the Allen testimony, it begins on page 346 and ends on page 353.

(The testimony referred to is included in this record as follows:)

MISS ROSE ALLEN, produced as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

154 Direct Examination.

By Mr. Brodie:

Q. Will you state your full name, please?

A. My name is Rose Allen.

Q. And you live in Tampa?

A. Yes.

Q. In what business are you, Miss Allen?

A. We are in the printing and publishing business.

Q. You say "we". With what company are you associated?

A. Florida Grower Press, Inc.

Q. How long have you been associated with the Florida Grower Press, Inc.?

A. Ten years.

Q. In what capacity?

A. As secretary and auditor.

Q. What is the business of the Florida Grower Press?

A. We do printing and publish the Florida Grower magazine.

Q. Will you please describe to the Court what type of printing you do?

A. We print letterheads and stationery and booklets, folders.

Q. Do you also do any printing of labels?

A. Yes, we do.

Q. What kind of labels?

A. Box end labels for citrus fruits and vegetables.

Q. And to whom do you supply those labels?

A. To the packing houses and shippers in the State of Florida.

Q. Does your company buy any paper from the Tampa Paper Company?

A. Yes, we do.

Q. Do you know whether that is a branch of the Jacksonville Paper Company?

A. I understand it is.

Q. What kind of paper does your company buy from the Tampa Paper Company?

A. We buy bonds and sulphides and tag board and book paper, and—

Q. What? I am sorry. I did not mean to interrupt you.

A. That is all right.

Q. Are you finished?

A. Yes, sir.

Q. What do you mean by book paper?

A. That is paper that is used for printing folders and advertising matter and printing of that type.

Q. Is that commonly a glossy coated paper?

A. Yes, it is.

Q What is that book paper used for?

A. It is used for printing these advertising folders and booklets and pamphlets and matters of that kind.

Q. Is any of the paper that your company purchases from the Tampa Paper Company used in printing labels?

A. Yes, sir; a small portion of the labels we produce.

Q. Approximately how many labels does your company print annually?

Mr. Kurz:

We object to that question unless it is limited to the labels printed from products of the Jacksonville Paper Company.

The Court:

Yes, I think so.

Mr. Brodie:

I was just getting to that. She said a small portion and I want to show just what a small portion is.

The Court:

All right.

Mr. Brodie:

May the witness answer the question?

The Court:

Yes.

Q. Will you answer the question?

A. Approximately, you understand?

Q. Yes, ma'am.

A. Approximately, oh, two hundred and fifty million.

Q. Two hundred and fifty million labels?

A. Yes, sir.

Q. Annually?

A. Yes, sir.

Q. In 1939—I withdraw that question. Is the business of supplying labels to the packers a seasonal business?

A. Yes.

Q. And does the season run from one year into the next year, one calendar year into the next one?

A. Yes, sir.

Q. For the season 1939 to 1940, do you know whether your company purchased any paper used for labels,—for convenience sake I will call it "label paper,"—from Tampa Paper Company?

A. We bought a small amount.

Q. How much?

A. Oh, between a hundred and a hundred and twenty reams. It was one order.

Q. How many pounds was that?

A. Oh, about 10,700 pounds, something like that; just offhand, you understand.

Q. Yes, I understand. And that was used for printing box end labels, was it?

A. Yes, sir.

Q. Approximately how many labels would ten thousand pounds of paper, purchased from the Tampa Paper Company, for that season, account for?

A. About a million and a half, I guess.

Q. Do you know, Miss Allen, whether the fruit crates on which those labels are pasted are shipped out of the State?

Mr. Brodie:

Or, will the Court take judicial knowledge of that?

A. I wouldn't know, because I don't ship them.

Q. You do not ship the fruit crates?

A. No, sir.

Q. For the season 1940-1941, did you purchase, or rather, did your company purchase any of this label paper from the Tampa Paper Company?

A. Yes.

Q. And was that label paper used for the printing of labels for fruit crates?

A. Yes; fruit and vegetable..

Q. Have you any—strike that. How much did your company purchase from the Tampa Paper Company for the season 1940-1941?

A. You mean in labels produced?

Q. Well, I am going to see how much in quantity of paper, and then translate it into labels produced.

A. We bought a carload.

Q. Can you tell the Court approximately how many labels a carload of paper would account for?

A. I—

Q. Well, suppose we approach it this way: You have already testified that ten thousand pounds would account for approximately a million and a half labels. Do you know how many pounds are in a carload?

A. (No response.)

The Court:

Was all of that carload used to print labels?

A. Yes, sir.

The Court:

Go ahead.

Q. Would that carload account for several million labels?

A. Yes.

Q. Do you also use book paper which is supplied by Tampa Paper Company for advertising literature and folders?

A. Well, I assume the book paper would eventually possibly be used for it. It is put on our floor, our purchases for them. We purchase book papers from other companies, too.

Q. Yes, ma'am. Is there any use, apart from labels for book paper, than folders and books? That your company makes?

A. A lot of uses. I can't think right now of it all; but a lot of uses other than that.

Q. What are the principal uses of that paper?

A. I beg your pardon?

Mr. Kurz:

Your Honor, it seems to me that is going far afield. The lady said she did not know whether of this book paper was used for folders. She assumed it could have been.

Mr. Brodie:
I am just trying to—

Mr. Kurz:
We are objecting to it.

Mr. Brodie:
I am trying to develop from this witness, by excluding other probabilities. I think I have that right.

The Court:
Go ahead.

. . . The question was read.

A. I thought I had answered that.

The Reporter:
You said, "I beg your pardon".

A. You mean this book paper in general?

Mr. Brodie:
Q. All the book paper that you purchased from Tampa Paper Company.

A. Well, I would have to look back at my records to specifically say that we printed a certain booklet from it.

Q. I am not trying to develop that. I am not asking you that. I am asking you, in general, what is that book paper used for?

A. You are talking about this glossy paper?

Q. Yes.

A. For folders and booklets and as you call it, advertising matter.

Q. What sort of folders and booklets and advertising matter? What do they advertise?

A. Oh, everything from—

The Court:

Soup to nuts!

A. Yes, sir.

Q. Hotels?

A. Yes, sir.

Q. Chambers of Commerce?

A. Yes, sir.

Q. Is any used for publishing air line schedules?

A. Yes, sir. You understand, sir, this is book paper?

Q. Yes.

A. Purchased from any paper company.

Mr. Brodie:

No further questions.

Cross Examination.

By Mr. Kurz:

Q. Miss Allen, can you state whether or not any of the paper purchased from Tampa Paper Company was used for any of those specific—any particular one of the specific uses that you mentioned?

A. I couldn't without looking back at my records and determining that that was the paper that was used for the job that it was from the Tampa Paper Company.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Brodie:

Q. Miss Allen, in giving that answer, do you except the ten thousand pounds of label paper?

A. Oh, I beg your pardon. We did print labels on that and used it for other purposes.

Mr. Brodie:

That is all.

(Witness excused.)

Thereupon, A. S. REINOEHL was Recalled as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

162 Further Direct Examination.

By Mr. Downing:

Q. Now, Mr. Reinoehl, will you state for the information of the Court the extent to which the accumulated hours or pre-pay, whether the system is changed since the trial of this case in 1941?

A. You mean the change in the method?

A. No, sir.

Q. Of operating?

A. I don't know of any change.

By the Court:

Q. Can you say with any degree of certainty that it is the same?

A. It is the same.

Q. It is the same?

A. Yes.

By Mr. Downing:

A.[Q.] You indicated a while ago in answer to the subpoena duces tecum that there were no letters or written demands made in the place of ex-employees for the payments, is that correct?

A. That is right.

Q. No such demands were made in writing?

A. No, sir.

Q. Or otherwise?

A. No, sir.

Q. Now, I may want to ask you,—to recall you for further questioning when the accumulated hours records are produced. For the present, that is all I need to ask you on this subject.

A. Yes.

Q. I will ask you a further question.

When raises were given employees under the accumulated hours plan in general, was that accompanied by an increase in the hours which they contracted to work?

A. No, sir; not generally.

Q. Was it sometimes accompanied by an increase in the contract hours?

A. I don't recall any.

Q. Didn't that result in an increase in the hourly rate you had set up?

A. If there was any change in the hours and there was an increase in the pay, it would amount to increase on the hourly rate.

Q. To make the arithmetic work out right?

A. It could not work out any other way.

Q. With reference to the bonus payments somebody said something at the branches on deposition that in a way the employees understood the plan as well as you did. Will you explain to the Court the basis on which the bonus payments were made?

A. Different percentages based on the length of service and the percentage, the percentage as calculated on the earnings of the previous year.

Q. In general, did the bonus payments start after the employee had been with you a year?

A. All employees less than a year, fifteen percent of their actual earnings.

Q. Began when they had been there how long?

A. Any length of time. At the time the bonuses were computed at the close of the books on May 31 of each year.

A.[Q.]May 31?

A. Yes.

Q. Your fiscal year begins June 1?

A. Yes.

Q. For all employees who have been in your employ a year or less you computed a bonus beginning June 1st, based on their previous year's or part year's earnings?

A. Less than a year, on the part year's earnings.

Q. Suppose there was an even twelve months, how would it figure?

A. Under the year's rate of pay.

Q. Percentage on the first year or less, fifteen percent?

A. Less than one year, fifteen percent.

Q. Exactly a year—or over?

Q.[A.] Exactly a year, fifteen percent.

A. from one to five years, twenty—exactly a year—

Q. Beyond five years?

A. Five to eight—twenty-two and a half percent.

Q. Did you make it upward from year to year?

A. Over eight years—twenty-five percent.

Q. Was that the limit?

A. Yes.

Q. That percentage, as I understand it, was on the previous year, both straight time and overtime?

A. Yes.
Q. If overtime was paid?
A. Yes.
Q. Where overtime was paid?
A. Yes. All included.

By the Court:
A.[Q.] All the dollars they earned?
A. All the earnings, regular time and overtime.

By Mr. Downing:
Q. Did you pay social security tax on your payments?
A. Yes.
Q. Did you pay unemployment insurance?
A. Yes.
Q. Withholding taxes?
A. Yes.
Q. Victory taxes?
A. Come under the same anyhow.
Q. Do you operate down there as far as income taxes purposes go on a cash or accrual basis?
A. Accrual.
Q. Accrual basis?
A. Yes.
Q. All your assets are charged on the books as of the time they accrue?
A. Yes.
Q. And not when the cash comes in to pay the claim?
A. That is right.
Q. Does the company on May 31 of each year or thereabouts give the employee any notice of any kind with reference to the amount of bonus payments?
A. There is generally a letter sent out to the employees; yes.
Q. Are the bonus payments made monthly?
A. Yes.

Q. In equal monthly installments.

A. Yes.

Q. Five percent or the other percent and apportion it in twelve monthly installments?

A. Yes.

Q. Suppose an employee leaves the employ of the company at the end of the year, does he get the remainder of his annual bonus?

A. No, sir.

Q. Suppose he leaves in the middle of the month?

A. He gets payment; it is monthly in advance for the month.

Q. On the letters which you state the company issues to the employees does the company issue any other writing or promise to pay to the employee on the bonus?

Mr. Kurz:

I don't know that that is material. I object; irrelevant and immaterial.

The Court:

Read the question.

(The Court Reporter read the last question.)

(Argument.)

Q. Does the company issue notes to its employees for the bonus?

A. Yes.

Q. In twelve installments?

A. Yes.

Q. And does the company hold those ~~in~~ its office?

A. Yes.

Q. Do you have here a sample copy of the letter which you send out?

A. No, sir.

Q. Will you produce one tomorrow?

A. Yes.

Q. In the meantime, will you state to the Court what reference the letter makes to the notes?

A. I think I would rather read that from the letter than from memory.

Q. If the employee leaves there during the year, what becomes of those notes?

A. Canceled.

Q. Who cancels them?

A. That is the condition under which the notes are issued.

Q. You issue separate notes to each employee or do you just issue one note?

A. Separate notes.

By the Court:

Q. Twelve separate notes for each employee?

A. No, sir; one separate note for each employee, subject to—payable in twelve monthly installments.

Q. And when you get through with it, it constitutes a memorandum in writing as to the amount that employee is entitled to receive if he stays with the company during the twelve months?

A. Yes.

Q. Who signs it?

A. Mr. M. R. McGehee.

Q. What is he, the—

A. Secretary and Treasurer.

By Mr. Downing:

Q. Is each note payable to the individual employee?

A. Yes.

Q. The company makes payments, bonus payments, monthly on the amount credited?

A. Entries on the books, each note.

Q. Who does the cancelling if the employee leaves during the year?

A. Either the pay roll clerk or myself.

Q. You don't pay any further after the employee leaves?

A. No, sir.

By the Court:

Q. Would that be carried on the books as a liability at the beginning of the year?

A. Yes, at the end, any unpaid balance goes back to the expense, credited back to the expense—goes into the file.

Q. Those notes, never being delivered to the employees, do not complete the transaction so far as a negotiable instrument is concerned, and the Court would be interested in knowing why you go through all that work making out the notes and keeping a monthly account of your notes to keep them in your books?

A. That is the only record we have of the payments made to the individual.

Q. That is a separate method of bookkeeping of your employee?

A. Yes.

Q. They are not on the general books of the company?

A. No, sir.

Q. I don't see how you run in and out of your liability. I guess you have a method that enables you to do that so you can account for the money yourself, but any employee can't do it?

A. That is right.

The Court:

Go ahead.

By Mr. Downing:

Q. Do you charge those notes on any of your records as a liability to the company?

A. How is that?

Q. Do you enter those notes on the records of the company as a liability?

A. As a bonus payroll reserve.

Q. At the time you issue them do you set them up as an employee account?

A. In the books of the payroll reserve account. The reserve account is equal to the notes at the time they are drawn?

Q. When an employee leaves, do you make a credit on that account for the unpaid portion of the note?

A. At the end of the year when we close our books.

By the Court:

Q. When you transfer out of that reserve account, you transfer that into surplus?

A. Goes back in through the expense account into profit and loss; goes back into income tax.

By Mr. Downing:

Q. Mr. Reinoehl, after the employee serves with the company a length of time down to May 31 and after the bonus is set up for him if he stays in your employ does he regularly receive that monthly payment?

A. Yes.

Q. Are there any exceptions where the withdrawal is denied?

A. Not if he stays on the payroll.

Q. Do you or anyone in your department have any discretion to deny it to him?

Mr. Kurz:

Objection. I don't see what that has to do with it

The Court:

I don't see what that has to do with it. He is entitled to it as long as he stays with the company.

Q. On the accumulated hours account do you set this up in any manner as an asset of the company?

A. No, sir.

Q. Then you withhold it when he is in your employ?

A. Yes.

Q. After he has left your employ?

A. No, sir.

Q. Do you ever charge it off as bad debts after he leaves the company?

A. They are carried as a memorandum on the hourly record. There is no money space on the accumulated hour record.

Q. In some faces it is not the policy of the company to continue that record in expense and to recharge the cost if he comes back into your employ?

A. I don't know whether the payroll clerk puts anything on reinstate the old hours or not. I can't say, positively.

Q. Does a copy of the accumulated hours record come under your jurisdiction?

A. Yes.

Q. What is your instruction to your subordinates on that?

A. I don't recall that I have ever issued any instructions on that particular point; there has been such rare cases of that kind.

Q. Haven't certain veterans returned to your employ?

A. Yes.

Q. Do you know of your own knowledge whether the old record of accumulated hours was carried and the old debit was charged against him when he re-entered your employ?

A. I would rather check the accumulated hours record before I make a definite statement on that.

The Court:

Will you do that and in addition to that, will you find out what your practice is otherwise?

Q. Do you know, Mr. Reinoehl, what the practice of the branch managers is with reference to continuing that old charge against the employees when they re-enter the employment?

A. No, sir; I do not.

By the Court:

Q. Do you have control of the policy in the branch offices as well as in the home office?

A. Yes.

Q. Whatever you have in effect it should be the same policy—

A. Should be the same policy, but if they weren't given specific instructions on that, they may have deviated.

The Court:

We are interested in the policy; if there is any exception to it that is another question.

By Mr. Downing:

Q. You don't have any policy on that?

A. I never issued any instructions on it.

By the Court:

Q. When the employee leaves the company, what happens to those accumulated hours?

A. The record of the accumulated hours is simply kept in the file.

Q. They are kept in your file?

A. Yes. They are kept in this file right here on employees who are no longer with us.

Q. I would like to know what you have done with the employees who have come back to you?

A. I can check that.

The Court:

I want to find out what the practice is. What do you do in those kind of cases?

By Mr. Downing:

Q. Mr. Reinoehl, was there a time late in 1944, I believe, when the warehouse men were changed from accumulated hours basis to hourly rate basis?

A. Yes.

Q. At the time of the change what was done with the old accumulated hours record on the warehouse men?

A. We still have the records.

Q. Have you made an inspection to qualify yourself?

A. No, sir.

Q. If an employee leaves in the middle of a week and he is entitled to only part payment for a week, do you make any—or retain any part of it on account of the old indebtedness?

A. No, sir.

Q. If an employee works a full week the last week, do you retain any part of it?

A. No, sir.

Q. Do you demand any part of it?

A. No, sir.

By the Court:

Q. Do you ever take any pay from an employee by charging accumulated hours against him?

A. No, sir.

Q. You have a fixed amount of pay which they draw?

A. That is right.

Q. They get that compensation?

A. Yes.

Q. Without particular regard to how many hours they worked unless they did not have accumulated hours to write off any extra—

A. If they do not have enough accumulated hours and they work more than the scheduled hours, they would draw additional pay.

Q. But in this case, where they do have accumulated hours they do not draw additional pay?

A. That is right.

Q. When they work less than the scheduled hours, it would enable them to earn the dollars you pay them for the week. What do you do with those hours? Do you give them credit?

A. They get credit on the accumulated hours if they work less.

Q. They get credit?

A. For those hours.

By Mr. Downing:

Q. Isn't it true if they work fewer hours than the contract hours for the employee set up—fifty-four—

A. It would be a charge. We charge—

Q. And your warehouse men were set up fifty-four hours?

A. I think they were.

Q. This regular schedule was fifty?

A. Do you mean the regular schedule of hours—but there have been a great many times when it was necessary to work more than fifty.

Q. Good many times they worked less than fifty?

A. Yes.

Q. When they worked the regular schedule four hours each week would be charged against them?

A. Yes; that would be fifty-four.

Q. If they had a holiday in a particular week or for some other reason did not work a day then would the

hours on that day's work also be charged against them—a nine-hour day, or—

A. What?

Q. Suppose an employee got off a whole day and instead of working fifty, worked forty-one, would that warehouse employee be charged with those hours on your account?

A. I think so.

The Court:

Mr. Downing, you are not going to be able to finish this witness this afternoon. I have to recess at 4:30 as I have to meet Judge Strum in a few minutes. There are one or two questions I want to ask this witness before I recess.

By the Court:

Q. What was the effective date of the bonus payment arrangement? Can you remember?

A. The original?

Q. Yes.

A. I think it was in 1941, the present arrangement.

Q. Now, what was the effective date of the accumulated hours arrangement?

A. That, I think, was in 1940.

The Court:

Let me ask this question of counsel: Was the bonus arrangement and accumulated hours arrangement both in effect when this case was tried?

Mr. Downing:

If the bonus payments were in effect, I did not know about it. It may have been in effect before the trial. If so, we did not discover—we discovered it on the last investigation.

The Court:

It was not dealt with in the other case. When was the appeal filed in this case?

Mr. Downing:

It was filed July, 1940.

The Court:

Was the matter of the bonus payments or the accumulated hours plan made an issue in the other case?

Mr. Downing:

The accumulated hours was. Bonus was not. Judge Waller shut it off on that. He said if he granted an injunction, it would be on the basis of other violations which had continued down to a short time before the trial.

The Court:

Then I am confronted in this case with this question de novo, whether or not the plan of bonus payments and the accumulated hours constitutes a violation of this injunction.

Mr. Downing:

They are both new.

The Court:

In this case.

Mr. Downing:

That is right.

By The Court:

Q. As I recall it now, it is this: Taking the matter of the payment of wages to an employee who works

over forty hours a week in one week but works less than the amount specified in what you call this accumulated hours plan, does he receive any different compensation for his week's work based on different hours worked during the week in excess of the mininmum hours for the week, assuming that they are in no instance in excess of the hours that you use in determining his hourly rate.

A. No, sir—that he would get paid for the scheduled hours.

Q. Say that the man, the employee works fifty hours; another one works fifty-six hours during the week; those were within the bonus time limit; there would not be any difference in the pay of those two employees?

A. No, sir.

Q. That is in effect generally, is it?

A. Yes.

Q. In this bonus plan?

A. Yes; under the accumulated hours.

The Court:

It is dependent entirely on whether or not it is in compliance with the Act.

Mr. Kurz:

The accumulated hours plan is not in effect in the so-called intrastate branches. Am I correct:

The Witness:

Yes.

By The Court:

Q. You have a list of the places where it is not in effect?

A. Yes.

The Court:

Assume he has to work beyond what they call the contract hour—

Mr. Downing:

No, sir; accumulated hour—he does not get any extra pay. He only gets credit on the books.

The Court:

And the crux would be whether or not that employee has accumulated hours.

(Thereupon, at 4:40 o'clock P. M., June 17, 1946, the Court took a recess until 10:00 o'clock A. M. the next day.)

Jacksonville, Florida, June 18, 1946, 10:00 o'clock A. M.

Hearing resumed pursuant to adjournment the previous day.

Appearances: Same as heretofore noted.

The Court:

Mr. Downing, you may proceed.

179 Thereupon A. S. REINOEHL a witness on behalf of the plaintiff, was Recalled, and testified as follows:

Direct Examination (Continued).

By Mr. Downing:

Q. During the day yesterday you were requested to produce from your employment files typical employment

papers on employees in the home office warehouse and each of the branches?

A. Yes.

Q. Have you done that?

A. Yes; there is one each from the interstate branches and one each from the intrastate branches.

Mr. Downing:

May I read into the record the names of those from the interstate branches:

Frances Fullington,	Jacksonville Paper Co.
Imogene Varnadoe	Florida Paper Co., Jacksonville, Fla.
Helen L. Dunavant	from the Mobile Branch.
Carrie L. Anderson	from the Tallahassee Branch.
Florence C. Reddick	from the Savannah Branch.
George L. Toler	from the Pensacola Branch.

From the intrastate branches:

Clarence Stevens	at Lakeland
Dorothy Brown	Macon.
Nelle B. Cooke	Miami.
Walker Williams	Orlando
Rosalie Ida Bartecki	St. Petersburg
Hattie W. Frick	Tampa

By Mr. Downing:

Q. Have you produced a sample or typical letter of the type addressed to the employees with reference to the yearly bonus?

A. Yes.

Q. Is this the same letter that was sent out on June 1 of this year?

A. I don't believe the one for June 1 has been sent out. We are just closing our books of the company. Here is

a copy of the same letter sent out on May, 1944, and the other one June 1, 1945.

Q. Is there any difference?

A. No.

Q. Have you prepared or devised a proposed letter for this year?

A. It has been prepared; it has not been sent out.

Q. Do they differ at all from the one for May of last year?

A. Only in the date and in this one paragraph pertaining to the salary phrasing—this has been deleted.

Q. The next to the last paragraph has been deleted?

A. Yes.

Q. That is the only change?

A. Yes.

Mr. Downing:

We offer in evidence the exhibit just identified by the witness, being dated May 31, 1945. It is to warehouse employees, and it is signed Jacksonville Paper Company by the President.

The Court:

Any objection, Mr. Kurz?

Mr. Kurz:

No objection.

The Court:

Let it be received in evidence.

(The paper was admitted in evidence and marked Government Exhibit 2.)

Mr. Downing:

Have you produced a sample note such as was issued to the employees?

Note: In the copy of the transcript of testimony which was filed in this Court, page 182 is missing, which is the testimony included in the red brackets herein.

A. Yes.
Q. On or about June 1 of each year?
A. Yes.

Mr. Downing:
We offer this in evidence.

The Court:
Have you ony objection, Mr. Kurz?

Mr. Kurz:
No.

The Court:
Let it be received in evidence.

(The paper was admitted in evidence and marked Government Exhibit 3.)

Q. Have you produced here on request the personnel file of Margaret Oetgen of Savannah?
A. Yes.

Q. Have you produced here on request the personnel file on J. Normal Terrell of Jacksonville?
A. Yes.

Mr. Downing:
We ask that this file be marked for identification, each of them. Just this last one. We may have to refer to it, but I do not think it is necessary to mark them.

(A paper was marked Government Exhibit 4 for identification.)

Q. Have you spent any time, Mr. Reinoehl, in attempting to prepare a summary of the instances where extra money has been paid to employees beyond their salary; that is, employees employed under the accumulated hours plan?

A. No, sir; I did not. The accumulated hours records were all in Court, and I could not check on them last night.

Q. The accumulated hours records do not contain the record of extra money paid, do they?

A. No, sir; but it would simplify the checking because to do that would necessitate checking all the records, payroll records and the pay roll records and accumulated hours records were on file in Court, and I had no records to refer to.

Q. Perhaps you could clarify it without the necessity of a summary, by your testimony.

A. All right.

Q. Has there been any case when the company paid extra compensation to an employee where there was any debit balance against that employee on the accumulated hours record?

A. There have been cases where additional payments were made to the employees where they had used up all their accumulated hours. However, that has been some time ago, and there is no recent—

Q. That is not the kind of case I am talking about.

A. What?

Q. I am talking about whether the company ever paid any extra money to employees beyond their agreed salaries where there was a debit on the accumulated hours record?

A. I don't recall any such case.

Q. I will ask you this—

By The Court:

Q. It is the practice of the company not to do it?

A. That is right.

By Mr. Downing:

Q. You recall no instance where there was?

A. I don't recall any.

Q. At certain times of the year during inventory periods, for example, did it become necessary for certain employees to work rather abnormally long hours?

A. Yes.

Q. In those cases did the company sometimes make an allowance to those employees for additional sums to supplement the—supper money or—

A. Their suppers were paid for at that time and payments were not made to the employees but merely reimbursed for the expenses on supper money on those nights.

Q. The actual cost for the suppers?

A. Yes.

Q. Actual cost or flat allowance?

A. Actual cost.

Q. And how do they claim that—in the same way?

A. At the close of the week.

Q. I understand, but are they required to produce any voucher or restaurant check.

A. No, sir.

Q. Just to claim it?

A. Just to tell the cashier how much they spent for supper money that week, and it is reimbursed.

Q. Was that intended as compensation?

A. To offset that extra expense to which they are put on account of eating out at night instead of being able to go home for dinners.

Mr. Downing:

I think with that testimony it will not be necessary to ask for the preparation of the summary. I think Mr. Reinoehl's testimony is clear on the point I was interested in.

Q. Mr. Reinoehl, Mr. Shelton and I prepared a very rough summary in Mr. Shelton's inimitable hand-writing—the accumulation of hours before the current book. I will ask you to check this at your convenience and to insert from your payroll records the date on which the record began. We have not always been able to glean that from the records here. I guess you will be able to.

A. Yes.

Mr. Downing:

I will ask that this be marked for identification, Your Honor, as Plaintiff's Exhibit 5.

(The paper was marked Government Exhibit 5 for Identification.)

Mr. Downing:

I will ask that the witness complete it at some time before the trial is over. It is a summary of accumulated hours record. That is a list of current employees, your Honor. We are not going back into the old records to list the ex-employees—the amounts accumulated at the time they left—but I think these are fairly representative.

The Court:

If it is not, the defendant will have the opportunity to point out in what respect it is not representative; otherwise the Court assumes that it is representative.

Mr. Downing:

With that agreed to, I will deliver this exhibit to Mr. Reinoehl.

The Court:

All right. Mr. Reinoehl, if there is anything you don't understand, you take it up with Mr. Downing.

Mr. Downing:

And also, if it is not too much trouble, if you will type the thing. It is not very long. It is in Mr. Shelton's inimitable handwriting.

The Witness (Mr. Reinoehl):

I will be glad to have that done.

By Mr. Downing:

Q. I refer to the loose-leaf book, from the plaintiff's exhibit for identification 1, accumulated hours.

Will you look at that, please sir, and particularly to the week ending May 11, 1946. Does that indicate that the employee worked thirty-two hours?

A. Yes.

Q. And whose allowable hours were fifty-five, were they not?

A. Yes.

Q. The schedule hours?

A. Yes.

Q. Therefore, the difference between thirty-two and fifty-five charged to the account?

A. That was carried over as prepaid hours.

Q. The twenty-three hours were charged to her account?

A. Yes.

Q. Is it customary in all cases for the hours below forty to be charged into the account just as well as the hours above forty?

A. All the hours that they have actually worked were charged against the account and in case of illness or unavoidable absences, they were paid for the full week.

Q. I will get to that later. You mean, do you not, that the deficit between the hours worked and the allowable hours were charged to the account?

A. I mean the difference between the number of hours schedule hours for which the employee was paid and the number of hours actually worked was carried over as accumulated or prepaid hours.

Q. And in carrying off that balance you made no distinction between weeks when they worked forty hours a week and weeks when they worked more than forty hours?

A. No, sir.

Q. I show you from the same book the record of the employment of M. Norland, total accumulation on June 1st of 726 hours and thirty minutes. This record indicates that the record was begun on the week ending September 30, 1944. I will ask you if that employee previous to that time had been in the employ of the company?

A. As I recall, she had not because she started about that time, about two years ago, and the record started from that date.

Q. I show you from a loose leaf out of the back of the book, the sheet on Betty Crosby, who apparently left there this last week, did she not? Did she leave there during the week of June 1?

A. About a week ago.

Q. Did she leave in the middle of the week?

A. I don't remember what day.

Q. Look at the record on that and refresh your memory. I direct your attention to the note after the last entry and to the manner in which the accumulated hours were charged that week. Doesn't the note say this: Last day, Wednesday?

A. Yes.

Q. I direct your attention to the fact that her time worked that week, twenty-six hours, was also—

A. Yes.

Q. For accumulated hours you charged here only being one-half of the allowable hours—twenty-seven hours and fifty minutes instead of fifty-five hours; is that right?

A. That is right.

Q. Was that at your direction?

A. I think that probably was at the direction of Mr. M. Mr. McGehee because she left, and I did not know that she left without notice. She just simply failed to return.

Q. Fifty-five hours was the schedule set up under the allowable hours plan?

A. Yes.

Q. When she left in the middle of the week what did you charge her with—half of it?

A. Yes.

Q. And accumulated, the difference between the three days she worked and one-half the allowable week?

A. Yes.

Q. Was that your usual policy?

A. Whenever they were paid for less than a full week they were only charged with the hours actually worked.

Q. In instances when holidays intervened in a week-end and the employees failed to respond and worked a fewer hours than normal, did that increase the deficit which was charged to the account?

A. Yes.

Q. In that account I show you again the sheet of Betty Crosby, and you notice in the column for the week ending December 29, 1945 and January 5, 1946 at this column here indicates that the notice was made out Christmas and New Years respectively in those weeks?

A. Evidently; yes.

Q. Look at the notice.

A. Yes.

Q. Were the hours worked that week by that employee for that reason less than normal?

A. That is right.

Q. And the full deficit stated charged to the account?

A. Yes.

Mr. Downing:

We wish to offer this in evidence, your Honor.

Mr. Kurz:

No objection.

The Court:

Let it be received in evidence.

(The paper was admitted in evidence and marked Government Exhibit 6.)

Q. When employees were allowed vacations was it or not your practice to pay for those vacations?

A. Yes.

Q. The full weekly salary?

A. Yes.

Q. For one or two weeks?

A. One week.

Q. Was that week's schedule hours charged against the account?

A. Yes.

Q. If the employees were out for illness was it or not the policy of the company to pay for the time off?

A. Yes.

Q. Were those schedule hours charged against the account for the week the employee was out with illness?

A. Yes.

Q. Or for days when the employee was out for illness?

A. Yes.

Mr. Downing:

Your Honor, the government wishes to offer from the loose leaf book the accumulated hours account included among Plaintiff's Exhibit for Identification No. 1, the account of Christine Blackmon, one of the female employees in the home office. We offer this as typical and illustrative generally of the female employees to avoid having to offer the entire record.

The Court:

Show it to Mr. Kurz. Any objection to it, Mr. Kurz?

Mr. Kurz:

I would like to ask the witness if it is typical.

The Court:

All right, sir. Let him examine it, and ask if it is typical. You heard the statement of Government's counsel that he was offering it as illustrative.

By Mr. Kurz:

Q. Will you look at that account of Christine Blackmon and see if it is typical of all other accounts of that nature kept by the company?

A. Yes. (Witness examined paper). No, it is not.

By The Court:

Q. In what respect is it not typical?

A. In the first respect that for some reason Miss Blackmon failed to register her time for the first five weeks of her employment, and that notation is on the days of this accumulated record initialed by myself. The accumulated hours began on the beginning of the sixth week.

In the second respect, Miss Blackmon left our employ on April 14, 1945 and returned in the week ending July 14, 1945, and the accumulated hours at the time she left our employ were carried forward and charged against her and while that is the proper handling of it at the same time it is not characteristic because we do not have many employees in which that has occurred.

Mr. Downing:

Your Honor, we offer the account as typical of the female employees employed in the home office.

Mr. Kurz:

I want to ask another question.

The Court:

All right.

By Mr. Kurz:

Q. Mr. Reinoehl, will you please examine that account and see whether there are any unusual absences shown on it?

A. What do you mean—unusual absences?

Q. For illness or any other reason?

A. Yes, there are.

Mr. Kurz:

If the Court please, it seems that a more typical record might be availed of.

The Court:

It will be received in evidence so far as the particular employee is concerned, but with the explanation of the witness that he can't call it typical. You might modify that. What it does is show the general handling of all your employees with the different kind of conditions that might arise in connection with the employment; that is, the illness, or break in the service—and what was the other one you mentioned?

The Witness:

Failure to record her time.

The Court:

Failure to record time. Except for those, it is typical of how they are all handled and it is also illustrative of those three things?

The Witness:

Yes.

The Court:

I can receive it.

Mr. Downing:

We accept the witness' qualification. We did not select it with any ulterior motive.

The Court:

Have you any objection as to its being illustrative of all these?

Mr. Kurz:

Not with that qualification.

The Court:

All right. With that qualification it is received in evidence.

(The paper was admitted in evidence and marked Government Exhibit No. 7.)

Mr. Downing:

Mr. Reinoehl, I am not through.

Direct Examination (Continued).

By Mr. Downing:

Q. Mr. Reinoehl, did I understand your statement with reference to the handling and carrying forward of the old account upon the return of the employee you just stated that was the proper way to do it. However, on your testimony yesterday did you or not testify that you had no policy with reference to whether the old account should be carried forward and that you had issued no instructions on the subject?

A. I testified I had issued no instructions, but that I would have to check the records to determine whether or not that had been followed through, which I have done, and I find in all cases that previous time is carried forward on the return of the employee.

Q. You referred to the home office and warehouse?

A. Yes.

Q. You don't know how it has been handled in the branches?

A. What was it?

Q. Do you know how it has been handled in the branches?

A. Not without checking the records.

Q. You don't have the records of the branches?

A. No. I can get them.

Q. Are you familiar with the case of Margaret Oetgen of Savannah where the old balance was not brought forward on her return?

A. No, sir.

Q. Mr. Reinoehl, will you state what this cloth binder or paper binder covers from among the book identified as Plaintiff's Exhibit 1? Is that the older accumulated hours record?

A. Yes, it is.

Q. Does this cover employees who have left the employ of the company, for instance?

A. Either employees who have left the company or sheets that have been filled and filed in here and the balance carried forward to the current binder.

Q. Will you look at the sheets covering the account of J. Norman Terrell and state if there are any peculiar circumstances about his account and if so what they are?

A. Apparently there is an error in the figures here.

Q. Where? What is it?

A. In carrying the prepaid hours forward for the—no, sir, I am wrong on that. That has been corrected.

Q. You are just looking at the last sheet. There are several sheets to his account. Arithmetical errors? Let us see about this on the face of the record. Look at the account generally and state if that could be used as typical or representative and if there is any reason why it could not be used as typical or representative?

A. There appear to be a few more cases of absence than in the general run of employees.

Q. Any other differences?

A. Other than that, it appears the same.

Mr. Downing:

From the book just referred to by the witness, your Honor, we offer the account of J. Norman Terrell as

representative of the male employees in the home office and warehouse on the basis of a sixty hour work week.

The Court:

Can it be removed from the binder?

Mr. Downing:

I think it can.

The Court:

Let us see if you have any objection to it going in evidence.

Mr. Downing:

I will state for the information of the Court and counsel that I do not propose to offer any other. I think the ones on Blackmon and Terrell we have a representative picture.

Mr. Kurz:

I will state in each instance, if the Court please, counsel selected some name which apparently is not truly typical. It seems to me if we are taking these as typical records, it should be one that is the usual one and ordinary one and not one that is—

The Court:

I will do this so far as the Government is concerned. If that is the question, I will let it be received in evidence, and I will give you the opportunity also to select some of your own choosing and put them in.

Mr. Kurz:

We have no objection to it, your Honor.

The Court:

That objection is overruled and it will be admitted in evidence.

(The paper was admitted in evidence and marked Government Exhibit 8.)

(By Mr. Downing):

Q. Mr. Reinoehl, from the personnel file on Mr. Terrell, which has been marked as Government's Exhibit 4. I hand you the green sheet from the employment notice, and I will ask you if this is a typical form used as application for employment?

A. Not as an application, but when they are employed it is an employment notice.

Q. It is a separate form used for the application or any other—

A. There is an application form, but it is not used in branches.

Q. Will you say that Mr. Terrell was one?

A. No, sir.

Q. Can you state for the information of the Court why it is used in some cases and why not in others.

A. Largely in cases where the application is taken from the prospective employee and pending employment. In some cases where there is a verbal employment, a formal application is not made, but the information is all obtained on the employment notice pending application.

Q. And this green sheet is the notice filled out at the time of employment?

A. Yes.

Q. Does the employee himself fill in certain information in the employment notice with reference to date of birth, the job he wishes, and so forth?

A. In some instances.

Q. I show you again Mr. Terrell's application, and I will ask you if he filled in the information on that blank with reference to starting date, position, date of birth, age, and so forth?

A. He did.

Q. I direct your attention to the fact that the information with reference to rate of pay, scheduled hours, and so forth, appear to be in a different handwriting.

Is that or not correct?

A. You refer to this (indicating)?

Q. By whom is that filled in?

A. By Br. Threlkold.

Q. What is his job?

A. At that time he was cashier and payroll clerk.

Q. Does he work under you or someone else?

A. Under me.

Q. He was acting for you in filling in those forms?

A. Yes. That was a part of his duties.

Q. Is that information that Mr. Threkold filled in usually done at the time or subsequent to the time the employee signs and fills in the remaining information?

A. I think it is.

Q. Do you know?

A. I do not know whether the rest is filled in subsequently or not, but it is not the usual practice to fill that in.

Q. Generally, who fills in it first?

A. I don't know that that is always handled in the same manner.

Q. Have you issued any instructions about how it shall be handled?

A. No, sir.

By The Court:

Q. When an employee is employed does he understand and know that is his compensation before he is employed?

A. Yes.

Q. That matter is settled by the employer, and the status of employee and employer is established?

A. Yes.

Q. There is no effort on the part of the company to conceal from the employee the amount of compensation or contract with reference to hours or anything else at the time he is employed?

A. None whatever.

The Court:

That goes to the heart of it.

By Mr. Downing:

Q. They are hired by the week, aren't they?

A. On a weekly schedule.

Q. On a weekly salary?

Mr. Kurz:

I suggest, your Honor, that the question is leading.

The Court:

It is. Let me ask a more leading question.

By The Court:

Q. When you say that the fact is that they are on a guaranteed minimum salary—

A. Yes.

Q. Guaranteed minimum salary?

A. Yes.

Q. Which is, according to the plan, a generally guaranteed minimum salary?

A. Yes.

The Court:

I gather that from the testimony.

By Mr. Downing:

Q. Who hired Mr. Terrell?

A. I believe that the employment notice shows that Mr. Graham hired him.

Q. You do not know whether Mr. Graham simply hired him on a weekly basis or not.

A. I don't know.

Mr. Downing:

From the personnel file marked for identification 4, we offer the employment notice of J. Norman Terrell.

Mr. Kurz:

No objection.

The Court:

Let it be received in evidence.

(The paper was admitted in evidence and marked Government Exhibit 9.)

Q. Mr. Reinoehl, who keeps the records of the accounts between Southern Industries and Jacksonville Paper Company?

A. What accounts do you have reference to?

Q. The charges, debits, credits and ledger accounts between Southern Industries and Jacksonville Paper Company.

Mr. Kurz:

I object to the question. It seems irrelevant and immaterial to this inquiry.

The Court:

On the statement of Mr. Downing as to the purpose, I will temporarily overrule your objection, and later if it develops that it is not for that purpose, you may renew your motion.

A. What is it.

The Court:
Read the question.

(The Court reporter read the last question.)

A. At the present time the bulk of that accounting is done by Mr. Skipper.

By The Court:
Q. Who is Mr. Skipper?
A. He is a bookkeeper working under my direction.
Q. For what company?
A. Jacksonville Paper Company.

By Mr. Downing:
Q. Is there among the records kept by Mr. Skipper an account or record of the goods supplied by Southern Industries to each branch?
A. He simply keeps the record of the goods that the Southern Industries charges to the Jacksonville Paper Company.
Q. Is there any breakdown according to the amount of Southern Industries goods supplied each branch.
A. Not on the Southern Industries goods.
Q. Is there any invoice record?
A. Yes.
Q. What do you call the accounts that show the breakdown per month of Southern Industries goods?
A. Southern Industries goods are not segregated apart from the other goods charged to the branches. The Southern Industries merchandise is charged to the Jacksonville Paper Company and later identified in the items of the merchandise that the Jacksonville Paper Company charges to all the branches and the merchandise checks back to—

Q. I will try to find out if your accounting records are in such shape that Southern Industries items on the branch accounts can be identified and segregated.

A. Only by going through all the charges; not in a lump in any one charge.

Q. Do you recall last fall when Mr. Charles L. Carter, our inspector, was making an investigation at your office?

A. Yes.

Q. Do you recall that you gave him certain figures with reference to the amount of purchases by each branch for a certain month?

A. I may have done that. I do not recall that.

The Court:

Let us be a little more specific. You are talking about the branches' purchases?

Mr. Downing:

I am speaking in general now.

The Court:

On the total purchases?

Mr. Downing:

Yes.

The Court:

All right.

Q. I ask you specifically if Mr. Carter inquired of you if the month of August, 1945 would be a typically representative month for purchases?

A. I don't remember whether he asked me that or not.

Q. Do you recall that you gave him figures showing the amount of purchases by each of your branches for the month of August, 1945?

A. Yes, I said—

Mr. Kurz:

I object to that line of questioning. It seems to me what line of conversation the witness had with Mr. Carter is not a point in this inquiry.

The Court:

I will hold in reserve your objection and see what he gets with it.

A. As I stated a few minutes ago. I may have given that information, but I do not remember it is all the information—

By The Court:

Q. You gave him what he asked for?

A. Yes, as far as I possibly could.

By Mr. Downing:

Q. I am not interested at this time in establishing the purpose, so-called, of the interstate branches but only the intrastate branches, West Palm Beach. Tampa. Orlando. St. Petersburg, Lakeland Paper Company. I hand you certain summaries which purport to represent the amount of purchases for the month of August by each of those branches. I will ask you to examine these and state whether to the best of your recollection and knowledge they do reflect approximately the amount of your branch purchases for that month?

Mr. Kurz:

I object to the question unless the witness himself made the memorandum and knows the figures to be correct.

The Court:

We are coming to that. Your objection will be good if he doesn't know.

Mr. Kurz:

May I ask that the question be read?

The Court:

Read the question, Mr. Reporter.

(The Court reporter read the last question.)

By The Court.

Q. I would like to add to that question, which is the information the Court and the lawyers need to know.

And do those papers handed you by Mr. Downing contain any information that you furnished the representative from Mr. Downing's office at the time he made the examination?

A. I don't know. They may be representative, but I would not care to state that they are because there may be memorandums—I don't recall the figures. All the figures were there. I don't recall these particular figures.

By Mr. Downing:

Q. I am not asking you if they are representative. I am asking for your best knowledge and recollection if those summaries do reflect approximately the total amount of purchases—purchases for the month?

The Court:
He does not know the number; is that correct?

Mr. Downing:
He did not know whether they were representative.

A. I don't remember whether—these are approximately correct.

Mr. Downing:
We can do it the hard way and ask for the records to be brought in.

Mr. Kurz:
I want the witness to have an opportunity to check to see whether the records are correct.

The Court:
You will have that opportunity to check the figures.

Mr. Downing:
Your witness.

Cross Examination.

By Mr. Kurz:
Q. Mr. Reinoehl, with reference to the accumulated hours plan, will you state for the benefit of the Court to what employees that plan has been applied and is now applied?

A. It is applied to the employees in the interstate branches; that is the office employees, and possibly a few who are called warehouse employees who are on an hourly basis, on a guaranteed weekly salary with an established schedule.

Q. Is it applied to any of the employees in the so-called intrastate branches?

A. No, sir; it is not.

The Court:

Those originally did cover the intrastate branches as well as the interstate.

Mr. Downing:

Judge Waller's decree covers only the interstate branches in the home office, but he later agreed, pursuant to the mandate—covers all of them except Daytona, which was new.

The Court:

Then the plan is not set up by the company to be applicable to all employees of a certain class that the Court has determined was subject to the Wage and Hour Law?

Mr. Kurz:

Not if the Court has determined those intrastate branches to be subject but only to the employees—it is not applicable to all the employees interstate. All the truck drivers and warehousemen are on an actual schedule and paid for the time actually worked and overtime for the hours actually worked.

(By Mr. Kurz):

Q. Are all the employees in the so-called intrastate branches paid on the basis of the hours actually worked?

A. Yes.

Q. I mean, of course, with the exception of the manager and salesmen and cashier?

A. Those who are set up on an hourly schedule are paid on the basis of the hours actually worked.

Q. That is all the employees in those branches except those who receive a weekly compensation; is that correct?

A. Yes.

Q. Mr. Downing inquired of you about the records taken at the time of the employment of a new employee, and he handed you a green sheet which was marked in evidence a while ago, the "employment notice". I also hand you herewith a white sheet. This one in particular refers to the Tallahassee branch and to the employment of Richard Fuller Boykin, and I ask you whether such a form is used for all the new employees in all places of employment by the company?

A. That is the instructions—to use this form and they are all furnished with this blank to be used for this purpose.

Q. Do you know whether that is generally done?

A. I think it is.

Q. Who keeps those notices?

A. They go into the personnel file along with the other employment papers.

Q. And come back then from the branch to the Jacksonville office?

A. Yes.

Q. Is it checked to see whether that employment is filled out?

A. I try to check them.

Q. So far as you know, is that the general custom to take those notices and have them signed by the employees?

A. Yes, generally.

Mr. Kurz:

We offer for identification a paper headed "Branch, Tallahassee, Florida, 11-30-42", and signed by Richard Fuller Boykin.

The Court:

Let it be filed for identification.

(The paper was marked Defendant's Exhibit A for Identification.)

Q. Mr. Reinoehl, when there is a change in the method of compensation, for instance, when there is an increase in pay, is there any information furnished to the employee then as to such change of rate of compensation?

A. There is a form similar to the form I just examined that is furnished to be used in connection with, particularly where there is a change in hours, but it will not be furnished to the employee in every case where there is just simply a change in rate.

Q. It there is an increase or change in compensation of any employee, does that refer to the rate per hour?

A. Yes.

Q. I hand you herewith a pink sheet headed: "Payroll change. Branch or location, Tallahassee, Florida", also reference to R. F. Boykin, and ask you whether that is the form used in connection with such payroll changes?

A. Yes, it is.

Mr. Kurz:

We offer that pink sheet for identfication.

The Court:

It may be filed for identification.

(The paper was marked Defendant Exhibit B for Identification.)

Q. You testified with reference to the bonus payments. Do you know by what corporate authority those bonus payments are authorized?

A. There is a resolution adopted each year to incorporate in the annual minutes.

Q. Do you know whether or not that covers any period of more than a year?

A. For each year.

Q. Does that resolution authorize the payment of a bonus based on the past year's services?

A. Yes.

By the Court:

Q. The bonus has no relationship to profits?

A. No, sir.

Q. Only to earnings of the employee during the past year's employment or part of the year's employment if the employee works less than a full year?

A. That is correct.

Q. And the company carries a reserve taken from the profits out of which it makes that payment without regard to whether the year previously was a successful or unprofitable year?

A. That is correct.

Q. Then it cannot be classified in any particular as a profit-sharing plan with the employee?

A. No, sir.

The Court:

Any further questions?

Mr. Kurz:

No further questions.

Re-Direct Examination.

By Mr. Downing:

Q. Mr. Reinoehl, I believe you said the white notice, marked Defendant's Exhibit A for Identification, was or-

dinarily signed by the employee at the time of employment?

A. Yes.

Q. Will you look in Mr. Terrell's file, our own Exhibit for Identification 4, and see if there is anything for him?

A. Apparently not.

Q. Do you know whether he signed one?

A. No, sir; I do not.

Q. Now, the pink sheet which has been offered for identification as Defendant's Exhibit B does not contain the employee's signature?

A. No, sir.

Q. Is that simply a form gotten up for the purpose of effecting the necessary payroll charges?

A. That is all.

Q. That is gotten up at the time the man is given a salary increase?

A. Yes.

Q. Who figures out the changes in the rate or hours at that time?

A. In the branches, ordinarily the branch cashier makes it out and sends it in for approval, and in Jacksonville when the payroll clerk has been authorized, he makes the calculation.

Q. Is it or not sometimes a policy to grant increases from Jacksonville to employees in branches when the employee has no definite knowledge or information he is to get a raise?

A. There may be in some instances they are—in practically all instances they have to be handled through the branches. The branches are instructed to send in requests for—

By the Court:

Q. They originate with the branches?

A. Yes, in the majority of cases.

By Mr. Downing:

Q. Do you have any company policy with reference to granting periodical increases to employees who remain in your employment?

A. No, sir.

Q. I believe you said yesterday the bonus had been in existence since 1940 or 1941—the bonus plan?

A. The bonus, the present bonus plan, has been in existence since May, 1942.

Q. I will ask you if there has been any deviation or change in the basis of the annual declaration by the board of directors since that time.

A. I can't say from my own knowledge.

Q. As far as you know, beginning at that time, has the board always declared fifteen percent bonus for those who have been in the employ for less than a year?

A. Yes.

Q. Has it always been twenty percent, for those who have been in the employ from one to three, or—

A. To five.

Q. Twenty-two and a half from five to eight?

A. Yes.

Q. And has it always been twenty-five percent over eight?

A. Yes.

Q. Then there has been no change since 1942?

A. Not in the rates; no.

Q. When the raises are given in the branches, do you know—ordinarily the rates are reflected in the increase in the allowable hourly rate or is it an increase in the hours worked, the contract hours, rather?

A. Practically, if not all, comes out of increase in the hourly rate.

Q. Do you know of any instances where, as a matter of fact in some cases, when the pay went up the allowable hours went down?

A. There may have been instances.

Mr. Downing:
That is all.

Mr. Kurz:
No further questions.

213 Thereupon H. D. GRAHAM was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:

Q. You are Mr. H. D. Graham?

A. Yes.

Q. I believe you and I have had this pleasure before, haven't we?

A. Yes.

Q. About five years ago?

A. Yes.

Q. In the original case against the Jacksonville Paper Company?

A. Yes.

Q. Are you now in business for yourself?

A. Yes.

Q. A competing business?

A. Yes.

Q. Are you here under subpoena?

A. Yes.

Q. When did you leave the Jacksonville Paper Company?

A. October 23, 1944.

Q. That has been about a year and a half ago?

A. About twenty months.

Q. Were you the manager of the coarse paper department until you left there?

A. I was in charge of the coarse paper department under Mr. C. G. McGehee.

Q. In that job of yours, did you do all the buying and ordering of coarse paper items for your branches?

A. I did a part of it; I did not do all of it.

Q. Were you in charge of the ordering and buying?

A. Mr. McGehee and myself worked that together.

Q. You can't do it all?

A. Yes.

Q. Did your branches in general handle the same lines of goods?

A. Generally speaking; yes.

Q. Was a proportion of those goods supplied by Southern Industries?

A. Yes.

Q. Will you state in general what proportion of coarse paper items were supplied by Southern Industries until you left there—your best estimate?

A. Any facts and figures that I had in my mind at the time I was with the Jacksonville Paper Company are very vague today. My mind is absorbed with facts and figures of my own business.

Q. Did you or not testify on this subject five years ago?

A. I did.

Q. Has the picture changed substantially from that time until you left there with reference to Southern Industries goods?

Mr. Kurz:

I object to that unless the witness can refresh his recollection as to what his testimony was, whether the practice continued, until he has an opportunity to see what his testimony was.

The Court:

That was not exactly the question. The question was whether or not there was any substantial change, not in the practice, but in the relationship of goods purchased from the Jacksonville Paper Company sent to the branch houses as from the time he testified in the other case. That is the question. Can you answer that?

The Witness:

No.

(By Mr. Downing):

Q. You can't answer it?

A. No.

Q. Did or not Southern Industries continue to furnish goods to your branches until you left?

The Court:

Can you refer to his testimony in the other case on that?

Mr. Downing:

It is quite lengthy.

The Court:

On that specific question?

Q. Drawing a line from the time of the previous trial there and taking from that date down to the time you left there, did Southern Industries generally supply a

larger or smaller proportion of goods to your branches than it formerly did?

A. Repeat that.

The Court:

Read it.

(The Court Reporter read the last question.)

A. I don't know.

Q. Can you state the approximate proportion which was supplied when you left there?

A. Those figures are very vague in my mind.

Q. Can you state in general the proportion? I am not asking for a specific figure.

A. I would say roughly twenty-five or thirty percent possibly.

Q. Are you familiar with the coarse paper sales book, price book, I mean?

A. More or less.

Q. Approximately how many different items of goods were listed; can you state?

A. I don't know.

Q. Were the goods carried in the price book normally carried in stock by your branches?

A. Yes.

Q. After the war came on were you able always to obtain for your branches a stock supply of all goods listed in that price book?

A. Practically.

Q. In some cases were you not able to do so?

(No audible answer.)

By the Court:

Q. The shortage had begun when you left the company?

A. I don't know.

By Mr. Downing:

Q. In addition to the goods listed in the price book, were there any items which your branches would order from you not carried in that price book?

A. Not to my knowledge.

Q. I will ask you specifically about special printed items with the customer's name and labels printed. Did your branches ever order those through you?

A. Yes.

Q. Did all your branches order them from time to time?

A. I would say that they did.

Q. And in general did the branches in proportion to their size and volume of business order about the same proportion of those special items?

A. Yes.

Q. Will you state for the information of the Court how the approximate proportion or percentage of the special items compares in proportion to the total business?

A. To the best of my knowledge it was very, very small.

Q. How small?

A. I would say approximately one-half of two percent.

Q. One-half to two. Is that as near as you can come to it?

A. I think so.

Mr. Downing:

That is all.

Cross Examination.

By Mr. Kurz:

Q. With reference to the printed items, are part of those supplied by Southern Industries?

A. Yes.

Q. Can you estimate what part of the printed items ordered by the Branches were supplied by Southern Industries Company?

A. I would say seventy-five to eighty-five percent.

Mr. Kurz:

That is all.

Mr. Downing:

No further questions.

(Ten minute recess.)

219 Thereupon CHARLES L. CARTER was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

Direct Examination

By Mr. Downing:

Q. You are Charles L. Carter?

A. Yes.

Q. Are you an inspector of the Wage and Hour Division?

A. Yes.

Q. You are now—

A. Administrative Assistant, War Assets Administration.

Q. Did you in the fall of last year, in the month of September, 1945, in the course of your duties as inspector, make an inspection of the Jacksonville Paper Company?

A. Yes. I think I started in August.

Q. During the course of your investigation did you confer with Mr. Reinoehl with reference to various aspects of that firm's business?

A. Yes.

Q. Did you or not request of him information and figures with reference to the amounts of branch office purchases for a representative period?

A. Yes.

Q. Did you or either one of you select any particular period as representative?

A. Together.

Q. What period did you select?

A. The month of August, 1945, which was the past month that was on the books. That is where there was a recapitulation sheet made on it, that—

Q. Did he offer you figures showing the amount of such purchases?

A. Yes.

Q. For each branch?

A. Yes.

Q. I want to hand you the examination of just a few branches—West Palm Beach, Tampa Paper Company, the Orlando branch, Central Paper Company, the St. Petersburg branch, the Pinellas Paper Company, the Lakeland Paper Company. I ask you if these sheets which I hand you are summaries of the figures furnished by Mr. Reinoehl or from his records covering the purchases by those branches for the month of August, 1945?

A. I am going to qualify that—the way we did that, Mr. Reinoehl had the book, and we sat at his desk and he called off to me. It was not broken down, that is, into

each branch—just exactly how that was broken down, it was readily obtainable, so he would call off the figures to me, and I took a pad and put down the figures.

Q. Are those the summaries which you prepared at that time?

A. Yes.

Q. Were they broken down to show to a certain extent the extra state origin of the purchases?

A. Yes.

Mr. Downing:

We offer in evidence the summary I just questioned the witness about.

Mr. Kurz:

I have no objection, your Honor, subject to checking, of course.

The Court:

You will have an opportunity to check them. Let them be received in evidence.

(The paper was admitted in evidence and marked Government Exhibit 10.)

Q. The exhibit which has just been received in evidence as No. 10 purports to reflect for each branch the purchases from outside of the State and the amount received from Jacksonville Paper Company, is that correct?

A. Yes.

Q. With reference to the items of goods supplied through Jacksonville Paper Company, did Mr. Reinoehl make for you any breakdown of that item with reference to the goods supplied by Southern Industries and those supplied from other manufacturers?

A. I don't recall whether there was a definite breakdown between Southern Industries. There was an account of the total amount of purchases made by the company. We went into that, whatever the total amount of purchases made in behalf of the company and then after listing Southern Industries there was a certain amount chargeable against the Southern Industries account and the balance charged against the Jacksonville Paper Company, and then that in turn was charged out to the different branches, as I recall.

Q. The item here in the summary entitled "received from Jacksonville Paper Company" includes both goods manufactured by the Southern Industries and other goods supplied to branches through Jacksonville Paper Company?

A. Yes.

Mr. Downing:

That is all.

Mr. Kurz:

No questions.

223 Thereupon J. NORMAN TERRELL was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:

Q. You are J. Norman Terrell?

A. Yes.

Q. Were you ever employed by the Jacksonville Paper Company?

A. Yes.

Q. Where?

A. In Jacksonville.

Q. In the home office?—

A. Yes.

Q. When did you leave there?

A. I left them on the 1st of December of 1945.

Q. Who you with now?

A. Graham and Jones Paper Company.

Q. When you were employed did you fill out in whole or in part those employment notices, Government Exhibit 9 which I hand you?

A. I filled them in part.

Q. Which part?

A. The only part that is in my handwriting.

Q. You will have to tell the Court what part that is.

A. I did not fill in this part that has the rate of pay per hour and the hours overtime and the schedule of hours and the total pay.

Q. Who hired you, Mr. Terrell?

A. Mr. Atkins contacted me and hired me.

Q. Who is Mr. Atkins?

A. Charles A. Atkins in the fine paper department, who is the man who came to me to get me to come with the company.

Q. I call your attention to the fact that Mr. Graham's name appears on your form.

A. He was sales manager in the coarse paper department at the time.

Q. Did he hire you or Mr. Atkins?

A. Mr. Atkins is the one that had the hiring done for Mr. C. G. McGehee.

Q. All of your negotiations were with Mr. Atkins?

A. I did not go into it until the morning I started to work.

Q. Were all your negotiations with Mr. Atkins?

A. Yes.

Q. On what basis did you and he agree how you were being hired?

A. We agreed on the salary.

Q. How much?

A. Forty dollars a week and the hours of work.

Q. How many hours did you agree to work?

A. I go to work from eight to six and from eight to one on Saturday.

Q. And was there any understanding with reference to lunch hour during the week?

A. One hour for lunch.

Q. Did Mr. Atkins tell you all that?

A. Yes. I asked him.

Q. The hours?

A. Yes.

Q. You asked him and he told you?

A. Yes.

Q. Did you have an understanding with Mr. Atkins about the hourly rate?

A. No, sir.

Q. From eight to six five days a week and with an hour off for lunch is forty-five hours, isn't it?

A. Yes.

Q. A total of fifty hours?

A. Yes.

Q. That was your agreement with him?

A. Yes.

Q. Did you have any agreement with anyone that you were scheduled to work sixty hours or whether you were to work sixty hours?

A. I did not know anything about it at all.

Q. Did you ever learn about it?

A. I did later. I understood that we were. I never saw it in writing.

Q. How did you get that understanding? Who told you?

A. By the other employees, their conversations in the office.

Q. Were they your supervisors?

A. No.

Q. Did anyone in a supervisory capacity ever tell you what you heard about the hours or that you were to work sixty hours?

A. No, sir.

Q. Were those figures with reference to rate per hour and scheduled hours filled in before or at the time you signed the employment notice?

A. Afterward, because all I filled in is the part in my handwriting, the same handwriting that is in my signature down here.

Q. Do I understand that the information with reference to rate per hour and scheduled hours was not on there when you signed it?

A. It was not.

Q. In whose presence did you fill this out?

A. In whose presence?

Q. To whom did you deliver it?

A. I gave it to Mr. Graham.

Q. Did Mr. Graham or anyone else tell you that other information would be filled in?

A. No, sir.

Q. Or what information would be filled in?

A. I did not know whether any information was to be put in there.

Q. Is this the first time you have seen it?

A. That is the first time I saw it since I turned it in.

The Court:

That is an exhibit in the case?

Mr. Downing:

No. 9.

The Court:

According to this testimony of this witness he agreed to work fifty hours a week for $40.00.

Mr. Downing:

Yes. This states sixty hours a week, $40.25. Someone has written in over the zeros, twenty-five cents. Twenty-five cents has been filled in later, apparently to agree to the arithmetical calculation below with reference to the rate and scheduled hours.

By the Court:

Q. What you were actually paid was $40.00 a week?

A. Yes; that is that week. When the first one came, it was $40.25.

Q. Did you get the twenty-five cents?

A. It was in the envelope.

Q. You actually were paid $40.25?

A. $40.25.

By Mr. Downing:

Q. Were any deductions made at the time you got the envelope?

A. Social Security and Withholding Tax.

Q. So you didn't get $40.25?

A. The envelope showed—

Q. That was your gross pay?

A. Yes.

Q. Did you ask anyone with reference to how that twenty-five cents got in there?

A. I certainly did. Nobody could ever give me a definite answer on it. I was not a supervisory employee. I asked about—

Q. Who?

A. Mr. C. B. Curtis.

Q. Who is he?

A. Man I worked beside.

Q. A co-employee?

A. Yes.

Q. Did you have any information at the time you were hired or did you get any information later that the difference between your hours you worked and the sixty hours a week were charged against you on some record or account?

A. I heard a rumor on it. I never saw any record of it.

Q. Where did you hear the rumor?

A. Just employees talking.

Q. The rumor was to what effect?

A. That the company was accumulating hours on us.

Q. Did you ask anybody about it?

A. No, sir.

Q. Do you know how many they have got you charged with?

A. No, sir; I have no idea.

Q. I hand you Government's Exhibit 8 which purports to be an accumulation of your hours. I ask you to look at the last week, June 1. I notice a total accumulation. Have you any understanding with the company or with any official of the company that you owe the company for those hours?

A. No, sir.

Q. How long had you been there before you started getting a bonus?

A. I started to receive a bonus at the beginning of the following fiscal year, which was June 1, 1943.

Q. Did you receive any letter or notice with reference to the bonus or how it would be paid?

A. Yes, we always received a formal letter.

Q. I hand you what has been marked filed as Government's Exhibit 2 and ask you if that is a copy of the form which you received each year?

A. Yes.

Q. Now, Mr. Terrell, this letter refers to the fact that the company issued a note to the employees to cover the bonus. Did you ever see your note?

A. No, sir.

Q. I hand you what has been filed in evidence as Government's Exhibit 3 and which purports to be a note issued to you, and I will ask you if that was ever exhibited to you or delivered to you?

A. No, sir; the first time I ever saw one of these notes.

Q. When did you leave there?

A. December 1, 1945.

Q. At that time you knew from the letter you received that the company had that note in its file?

A. Beg pardon?

Q. At the time you left you knew the company had the note in its file?

A. Very well.

Q. Did you make any request or demand for payment of the balance?

A. I asked if the remaining part of the fiscal year bonus would be paid; they said it would not.

Q. Whom did you ask?

A. Mr. Stanton.

Q. Who is he?

A. Paymaster.

Q. The man who paid you off?

A. Yes, he gave the money.

Q. Did you make any further demand or anything?

A. I asked if it was ever paid. They said it was not customary to pay the bonus if the man left.

Q. After you were hired at $40.00 a week were you from time to time raised?

A. I was raised once?

Q. To what amount?

A. $44.50. I think it was.

Q. Who informed you about it; that you would be raised or were being raised?

A. I was not informed. It was just raised in my envelope, and they were all given a raise. We all got a salary raise. The majority of us got a salary raise. I mentioned it to Mr. Graham, and he said he was glad to give us a little raise and he wished he could give us more than that.

Q. At that time or later were you notified that there had been any change made in the basis of your employment so far as the hourly rates go or schedule of hours?

A. No, sir; that was never done.

Q. By anyone?

A. No, sir.

Mr. Downing:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. Mr. Terrell, if I understand you correctly, when you signed this employment notice you say that the rate per hour was not filled in?

A. No, sir.

Q. Did you have any conversation with Mr. Atkins at the time he mentioned the employment to you in which he referred to the hourly rate which would total so many per week?

A. No, sir. That is out.

Q. Did you sign a record of the hours you worked each day?

A. You mean register in and out.

Q. Register in and out?

A. Yes.

Q. Did you sign that according to the time you went into the employment and out at lunch?

A. Yes.

Q. And back?

A. Yes.

Mr. Kurz:

That is all.

By the Court:

Q. While you were with the company you testified from the beginning your fixed rate of pay was to be $40.00 for a fifty hour week?

A. Yes.

Q. If you worked less than fifty hours during any week did they take anything off of you?

A. No, sir.

Q. If you worked more than fifty—

A. Only during inventory time, we worked more.

Q. Was anything added to your compensation?

A. No, sir.

Q. Then you were just paid that one amount whether you worked less or worked more hours?

A. That is the salary.

Re-Direct Examination.

By Mr. Downing:

Q. One question on Exhibit 10. Mr. Terrell, I direct your attention to the fact that the weekly salary which was apparently filled in in your handwriting originally has had a change made in it. Will you look at that entry very carefully and state whether, as you filled it in, you filled in $40.00 or $40.25?

A. I filled in $40.00. The twenty-five cents has been written over two zeros.

Q. Did you do that?

A. No, sir.

Q. Do you know when it was done?

A. No, sir; I do not.

Mr. Downing:

That is all.

Mr. Kurz:

No further questions.

Mr. Downing:

Your Honor, Mr. Shelton will conduct the examination of the next witness.

234 Thereupon B. L. FIELDS was called as a witness on behalf of the Plaintiff, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Shelton:

Q. You are B. L. Fields?

A. Yes.

Q. Mr. Fields, when did you start to work for the Jacksonville Paper Company?

A. Well, it has been now a little over a year. A year and three or four months ago.

Q. You are employed in the home office, are you not?

A. That is right.

Q. You work in the warehouse?

A. Yes; shipping department.

Q. Will you please state to the Court, Mr. Fields, what your duties are there in the warehouse. What work do you do?

A. It is to ship the goods that is there.

Q. Will you state whether your duties are chiefly relating to incoming shipments or outgoing shipments?

A. Mostly outgoing shipments.

Q. Will you state briefly what job you have with reference to outgoing shipments?

A. Shipping clerk.

Q. As shipping clerk what do you do, Mr. Fields?

A. We ship out on the truck and stuff like that.

Q. State whether or not in connection with such shipments it is necessary to label the consignee's name and other information on the shipment?

A. Well, it is necessary to do it. I don't usually do it but they have—it has to be labeled.

Q. It has to be labeled?

A. Yes.

Q. I understand you did not usually do it?

A. Sometimes if it should develop they did not have any labels you would have to put labels on it; it might be different—like that.

Q. Are shipping documents also necessary with outgoing shipments?

A. What do you mean—like invoices or bills of lading?

Q. Bills of lading.

A. Yes.

Q. Do you have any duties in connection with those shipping documents?

A. Well, now—

Q. Did you have any job to do in connection with those shipping documents?

A. Outside of checking them.

Q. Yes; did you check them, for example, did you check them against the goods?

A. I had to check them against the goods to see that the goods corresponded.

Q. Corresponded and all there?

A. Yes.

Q. Who was your supervisor or supervisors there in the warehouse?

A. Mr. Clyde McGehee first, and then Mr. Adams.

Q. Besides you and those two other gentlemen, who else worked in the same department where you work?

A. Do you mean everybody or—

Q. I mean are there any colored employees working in that department?

A. Yes.

Q. Who supervises those colored employees? Who tells them what to do?

A. Mr. Clyde McGehee and Mr. Adams.

Q. Who hires and fires those employees?

A. Mr. Clyde hires most of them; in fact, I think he probably hires all of them. I don't know for sure, but I think he kind of does the hiring of them.

Q. Who fires them?

A. I think he mostly does that.

Q. Have you hired or fired any employee?

A. No, sir.

Q. State whether or not you ever recommended that employees be hired or fired?

A. No.

Q. When you were employed who employed you, Mr. Fields?

A. Mr. Clyde McGehee.

Q. Did he tell you what you would be paid?

A. Yes.

Q. What did he tell you?

A. He said: "We go to work at eight o'clock and work to six; have an hour off for dinner; work to one o'clock on Saturday."

Q. Did you sign in, in the morning?

A. Yes.

Q. Did you sign in and out at lunch?

A. That is right.

Q. You signed out at night?

A. Yes.

Q. Is a card record kept of the hours you work?

A. Well, I can give you an estimate but I have been out since I have been there and they never taken anything out for it.

Q. If you are out do you sign the hours that you just stated or do you sign the hours that you actually work?

A. You are supposed to sign the sheet when you go out and when you come in. That is the way you are supposed to do. I don't know why they do it, but they do it.

Q. Do you sign the actual hours you work or do you sign the schedule that you told me about?

A. If I came in at ten minutes of eight, I sign that way. If I leave at ten minutes to one, I sign also. If I came in some other time, that is the time I sign myself.

Q. You sign the actual hours you work?

A. That is the way it works with me.

Q. How are you paid, Mr. Fields?

A. By the week.

Q. How much?

A. Forty dollars.

Q. State whether or not during the past year you have also been paid a bonus?

A. I have been paid a bonus for the time by last year.

Q. How much did it run a month?

A. I understand around fifteen percent; that is the way I understand it.

Q. How much money did you get in bonus in your pay envelope? How many dollars?

A. Well, now, let us get this straight. They give you that much money every month—once a month they give you a check.

Q. What does that check amount to every month?

A. Up to now it amounts to about $4.50. I haven't been there very long. This time it will be more.

Q. You have gotten about $4.50 bonus a month?

A. That is right.

Q. During the past year?

A. That is right.

Mr. Shelton:

If the Court please, I have a copy of our regulations on exeeutive and administrative employees, giving the number of employees under Section 541.1 and 541.2. The contention is this employee is not exempt under Section 541.1 as an executive employee or under Section 541.2 as an administrative employee.

The Court:

That is your contention, that he is not exempt, and Mr. Kurz, your position is that this is an administrative employee and exempt from the law.

Mr. Kurz:

That is correct.

Mr. Shelton:

If the employee is to be exempt it seems to me that this is the test: The burden is on the employer to prove the exemption.

The Court:

What is the yardstick by which you classify an employee as an administrative or executive employee?

Mr. Shelton:

If the Court please, there are six tests for an executive employee. He has got to satisfy each one. They are under Section 541.1 from (A) to (F).

Your witness, Mr. Kurz.

Cross Examination.

By Mr. Kurz:

Q. Mr. Fields, will you please state whether you have any employees in the warehouse whom you instruct as to what they shall do in the loading of freight?

A. I do not directly. Mr. Clyde McGehee and Mr. Adams handle that.

Q. Do you do any of the actual loading yourself?

A. I might once in a while do a little of it; not much, because you do not have time while you are checking.

Q. In other words, if I understand you correctly, you select the goods and instruct the—

A. They select them and call them out to me and I check them to see if they are right.

Q. All you do is check on the invoices as the goods go out?

A. Yes, and try to look at them to see if they look all right.

Q. Have you had any occasion to recommend the employment or discharge of any employee?

A. I have not.

Q. Do you supervise any of the men down there at all in their duties?

A. No, sir; I do not supervise them.

Q. How many men do you actually have handling freight?

A. They got a lot of people down there in the shipping department. They usually have about three that kind of catch the orders most of the time.

Q. These outgoing shipments that you handle, do you know where they go?

A. Out in the state.

Q. Mr. Fields, is it not true that you take the men who do the actual handling of the merchandise and take them into the warehouse and select the merchandise that is to be used in filling the orders that you have?

A. Now, sometimes they give you a bunch of orders —gather up a few and take with you.

Q. Then you take these men and go into the warehouse?

A. Yes.

Q. And get the merchandise up?

A. Yes.

Q. From the point of view that they would be under your supervision, would you tell them what to do?

A. I ask them something about it; they tell what they want to do.

Q. But do they tell it to you or the colored men?

A. Mr. Clyde or Mr. Adams.

Q. Tell you what to get out?

A. They give the orders and tell you to take with you—they call for this thing—and tell you to get it for—

By the Court:

Q. You say you are paid $40.00 a week?

A. Yes.

Q. Under your agreement with the company you work from eight to six each day with one hour off for lunch and from eight to one on Saturday?

A. That is right.

Q. That makes a fifty hour week?

A. And then sometimes I have been out and not there and they paid me right on.

Q. Do you ever do any week's work less than forty hours—you just testified that you did?

A. A few times.

Q. You were paid $40.00?

A. Right on.

Q. Never worked more than fifty?

A. Yes. I don't feel like I worked as much as fifty hours, on account of the time I have been out. I feel like they have lived up to the agreement now better than I expected. When Christmas comes along they give us an extra week's pay.

Q. But you don't generally work more than fifty hours?

A. You might work ten or fifteen minutes time over or something like that, to be on the job.

Q. Ordinarily you don't?

A. Ordinarily, they don't require you. When I started down there they told me I was not required to go in the stock department. They told me I was not required to—it seems to me like later if I went to work on my own—

Q. What title did you have?

A. Shipping Clerk.

Q. You are a shipping clerk?

A. Yes.

Q. Who is the head of the department?

A. Mr. Clyde McGehee and Mr. Adams is next, I suppose, or seems to be.

Q. What is Mr. Clyde McGehee's title?

A. I don't know; he is one of the owners of the business.

Q. What is Mr. Adams' title?

A. Kind of assistant.

Q. Who do you report to?

A. Mr. Clyde is the one hired me.

Q. Who do you report to from day to day, Mr. Clyde or Mr. Adams?

A. Either one; the one happens to be there.

Q. As far as you are concerned, there is no hard and fast rule on who you report to?

A. No reporting; just go down and do your work.

Q. How many laborers do you have in the shipping department?

A. Three of them—we usually work down there getting up—orders and like that. A lot of people when they get through they help out.

Q. Do they have any other shipping clerks than yourself?

A. They have one for the city there; they have one upstairs in the fine paper department.

Q. You are in charge of the department?

A. I am the one ships the goods out in the country.

Q. How many shipping clerks?

A. Three.

Q. You have charge of just one part or class of goods that they sell?

A. Yes.

Q. And what is that class?

A. Stuff ships out in the country.

Q. What do you mean when you say "out in the country"?

A. They have one for the State downstairs and one for the city upstairs.

Q. To supply the branch houses?

A. When they get the stuff ready to ship, they bring it down and if the truck come in I check it out.

The Court:

Any questions from either of you gentlemen?

Mr. Downing:
No more for the plaintiff.

Mr. Kurz:
No questions.

245 Thereupon THOMAS PASSMORE was called as a witness on behalf of the Plaintiff and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Shelton:

Q. You are Mr. Thomas Passmore?

A. Yes.

Q. Mr. Passmore, you are employed in the home office of the Jacksonville Paper Company?

A. Yes.

Q. In what capacity are you employed? What is your job down there?

A. Fine paper shipping clerk.

Q. How long have you been employed there, Mr. Passmore?

A. Since January, 1944.

Q. Continuously?

A. Yes.

Q. When you were employed down there who hired you?

A. Mr. Clyde McGehee.

Q. Did he tell you what you would be paid?

A. Yes.

Q. What did he tell you?

A. He told me it would be $40.00 a week for a while and I would get a raise later. After I had been there a year I drew fifteen percent of my salary as a bonus.

Q. Did you get the raise that he promised you?
A. Yes.
Q. And how much was that?
A. $5.00 a week.
Q. To $45.00 a week?
A. Yes.
Q. Are you still getting $45.00 a week?
A. Yes.
Q. Now, Mr. Passmore, will you please tell the Court in a little detail what your job is down there as fine paper shipping clerk?
A. Yes.
Q. What work you actually do?
A. Yes. I check everything in and out of the warehouse, ship, make out bills of lading, make out labels, get ready to ship, supervise the help I have in the warehouse.
Q. Now, state whether or not when freight cars are shipped out of there, there are bills of lading completed on outgoing goods?
A. Yes.
Q. State who prepares those bills of lading.
A. Well, I prepare the truck line.
Q. You prepare the truck line bills of lading?
A. Yes.
Q. Who prepares the freight car bills of lading?
A. Shipped—
Q. From the plant by freight car?
A. I prepare them for less than carload.
Q. In other words, on less than carload shipments, it is your job to prepare bills of lading on the outgoing goods?
A. Yes.
Q. Are express shipments made out of there?
A. Yes.
Q. Who prepares the shipping documents on the express shipments?

A. I do.

Q. Are they your express receipts?

A. Yes.

Q. Are parcel post shipments also made?

A. Yes.

Q. Will you state what your duties are, if any you have, with respect to outgoing parcel post shipments?

A. I make out my labels,—put it on—write it up for parcel post.

Q. In the case of express shipments is it also necessary to make up outgoing labels?

A. Yes.

Q. Who does that?

A. I do.

Q. In the case of shipments by truck line going out is it necessary to make up labels showing the destination?

A. Yes.

Q. Mr. Passmore, will you state whether you have any other duties down there with respect to the preparing of documents or reports or papers of any kind which you have already referred to or described?

A. No, sir; I don't; only the bills of lading and labels.

Q. You have stated, I believe, that you supervised some employees down there?

A. Yes.

Q. How many employees do you supervise?

A. Now I have eight.

Q. Does it vary somewhat in number? In other words, is it ever more or less than eight?

A. It has been less.

Q. What is the smallest number that you have supervised since you have been there?

A. Seven.

Q. What is the largest number?

A. Eight.

Q. Now, will you state to the Court, Mr. Passmore, what part of your time you spend in supervising those employees whom you have stated are under your supervision. What part of your total time is spent in supervising those employees?

A. Well, it is hard to say exact.

Q. I realize you did not have a stop-watch down there, but I wish you would estimate as closely as you can what proportion of your time is spent in supervising those employees under you?

A. You mean other than making out labels and bills of lading and shipping?

Q Of your total working hours down there what part do you spend in supervising those employees?

A. I would say seventy-five percent, more or less.

Q. It would be more or less?

A. Some days it would be more and some days it might be less, depending on the work we have to do.

Q. On the average, you think seventy-five percent?

A. Other than making out bills of lading and labels.

Q. In other words, if I understand your testimony right and correctly, if I am not wrong, you testified you would spend seventy-five percent of your time in supervising those other employees and twenty-five percent of your time on the paper work you described?

A. Yes.

Q. Mr. Passmore, as to those employees under you, state whether or not the hours they work are approximately the hours that you work, or whether they are more or less?

A. Supposed to be the same.

Q. Are they about the same?

A. Yes.

Q. Mr. Passmore, you have referred to seventy-five percent of the time that you were supervising and twenty-five percent of the time you were doing clerical work.

During that seventy-five percent of the time supervising, were you spending all of your time supervising or only a part of it?

A. I would say all of it at the warehouse and in seeing that they wrap the packages right.

Q. Do you spend part of that seventy-five percent of the time doing clerical work or shipping goods?

A. Yes.

Q. What part of it?

A. That is hard to say. It might take me five minutes to check one order, and it would not take me but half a minute to check another.

Mr. Shelton:

Your witness, Mr. Kurz.

Cross Examination.

By Mr. Kurz:

Q. Mr. Passmore, I believe you stated that you also received a bonus?

A. Yes.

Q. How much is that?

A. Twenty percent of my salary.

Q. Can you state that in dollars and cents per month?

A. You mean—no, sir; I can't.

Q. Can you state that in dollars and cents per month?

A. You mean—

Q. Dollars—

A. No, I can't. After all deductions is out of it, it is $31.71, I believe. I am not sure that is exactly right.

Q. That is not after Social Security?

A. Yes.

By the Court:

Q. Per month?

A. Yes.

By Mr. Kurz:

Q. After Social Security and Withholding Tax and all that?

A. Yes.

Q. Now, while you are making out bills of lading, express receipts and so forth do you keep watch on what is going on there too?

A. Yes, supposed to.

Q. In other words, while you are doing that you are still keeping an eye on the eight employees under you?

A. Yes.

Q. Who employs those men?

A. Who hires them?

Q. Yes.

A. Mr. Clyde McGehee.

Q. Do you ever have occasion to recommend anyone to be hired?

A. Yes; if I need a man I can go down and tell Mr. McGehee I need him, and then if he thinks I need him he will let me hire him.

Q. Have you had occasion to recommend anybody to be fired?

A. Yes.

Q. What was the result of that recommendation?

A. He was fired.

Q. Who is responsible to see that the correct merchandise goes out on the shipments?

A. Me.

Mr. Kurz:

That is all.

By the Court:

Q. Your total compensation per month from the regular pay and bonus is more than $200.00 a month; is that correct?

A. Yes.

Q. Your total compensation without the bonus is less than $200.00 a month?

A. No, sir.

Q. You say you are getting $45.00 a week?

A. Yes.

Q. Four weeks would be $180.00?

A. Yes.

Q. On that basis it would not carry you to $200.00 a month? You are not a $50.00 a week employee?

A. No.

Q. Without your bonus?

A. No, sir; not without the bonus.

The Court:

Any questions?

By Mr. Kurz:

Q. Mr. Pomeroy, when were you raised from $40.00 to $45.00 a week?

A. About six months ago.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Shelton:

Q. In response to a question by Mr. Kurz, I take it that you were testifying as to the amount of your bonus for the fiscal year from June 1, 1945 through May 31 of this year?

A. Yes.

Q. State whether or not the year before that, that is, the year of June 1, 1944 to May 31, 1945, you got a smaller bonus?

A. Fifteen per cent.

Q. Do you remember in dollars and cents how much a month that first bonus amounted to?

A. No, sir; I do not.

Q. That was during the period when you were just getting a salary of $40.00 a week, wasn't it?

A. Yes.

Q. Did the bonus during that first year amount to as much as $40.00 a month?

A. No, sir.

Mr. Shelton:
That is all.

Mr. Kurz:
No questions.

Thereupon, PLINY F. WHITE was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

254 Direct Examination.

By Mr. Shelton:

Q. You are Mr. Pliny F. White?

A. Yes.

Q. You are employed in the Florida branch of the Jacksonville Paper Company?

A. Yes.

Q. Mr. White, when did you start work for the Jacksonville Paper Company?

A. Jacksonville Company or Florida Paper Company?

Q. Florida branch of the Jacksonville Paper Company?

A. January of 1945.

Q. And you have been continuously employed there for a year and a half since then?

A. Yes.

Q. By whom were you hired?

A. Mr. Dougherty; R. A. Dougherty, Manager.

Q. Did he tell you when he hired you what you would be paid?

A. Yes; he gave me the salary and so forth—weekly basis.

Q. What did he tell you?

A. I started at $35.00 a week.

Q. Have you ever been raised?

A. I have.

Q. To how much?

A. $38.50.

Q. And that is your present salary?

A. Yes.

Q. During the year from June 1, 1945 up to May 31, 1946, did you get a bonus?

A. Yes.

Q. How much a month was that bonus?

A. I don't remember exactly the figures now. I think it was—I can't tell what, a month.

Q. Could you tell approximately?

A. About $8.50 a month?

Q. About $8.50 a month?

A. That is the gross, round figures. Of course, the tax came out of that.

Q. The gross was about $8.50 a month?

A. Yes.

Q. Mr. White, will you state what duties you have in the Florida Branch of the Jacksonville Paper Company?

A. Those duties are more or less general kind of office work. Of course, I handle cash, cash book and make deposits; assist in figuring invoices and making up the weekly time sheets.

By the Court:

Q. What is your position with the company?

A. Cashier.

Q. And you perform the ordinary duties of a cashier?

A. Yes.

By Mr. Shelton:

Q. Mr. White, did you start to mention that you had some duties with respect to payrolls?

A. Yes. I turn in those slips weekly.

Q. State whether or not your total hours—on the sheets as to how much work—in other words, what is the total on employees at the end of the week, the total hours worked?

A. Yes; I check the total we make, and the salary, the recap of each daily sheet and we check the total hours but—

Q. Will you state whether or not you wait on the trade and when customers come in to buy goods at the establishment?

A. I do to a certain extent. Mr. Dougherty and I both look after that.

Q. Do you do more of that or does he do more?

A. Well, I should say possibly he does more.

Q. What is Mr. Dougherty's job down there?

A. Well, as I say, as the manager.

Q. What part of the time is Mr. Dougherty at the plant, at the establishment?

A. The majority of the time.

Q. When goods are sold down there is it necessary for someone to pass on credit before the goods are sold?

A. Yes.

Q. Who does that?

A. Mr. Dougherty passes on it.

Q. Besides you and Mr. Dougherty, is there another employee who works in the office?

A. We have one young lady.

Q. What is her name at present?

A. Imogene Varnadoe.

Q. Who supervises Miss Varnadoe?

A. Mr. Dougherty does.

Q. Is there any employee in the establishment that you supervise?

A. No.

Q. State whether or not you ever hire or fire employees?

A. I do not.

Q. State whether you ever recommend that employees should be hired or fired?

A. Well, I will say "no". We might talk it over, but that is not my job. So I say "no".

Q. Is there a petty cash account kept at that branch?

A. Yes.

Q. Who is there to approve payments out of the petty cash account?

A. I do.

Q. Up to how much money?

A. We have $150.00 in our petty cash.

Q. State whether or not you have a limit on the individual item that you may approve?

A. No, sir.

Q. Mr. White, will you state whether or not you have any duties with respect to invoices that are prepared at the Florida establishment? Do you do any work in connection with those invoices?

A. I do; yes.

Q. What do you do?

A. Well, there are times when I figure some of those invoices and also price them.

Q. Do you do that work by hand or do you do it with a machine?

A. I do it by hand.

Q. In connection with the sales at the branches, is it necessary for somebody to approve the credit of the customer before a sale is made?

A. Yes.

Q. Who does that?

A. Mr. Dougherty.

Q. Do you ever do it?

A. No, sir. Let me get it straight, now just one thing there. In our business on the credit, there are some regular accounts with the company that are carried, and if we know them we make the shipment with the understanding that they are perfectly O. K.

Q. You understand he has approved those accounts in the past?

A. Yes.

Q. You would not go ahead and approve a—

A. I would not undertake to ship a new account without his passing on it.

Q. State whether or not you would make a shipment to an account where payment was in arrears without getting Mr. Dougherty's approval?

A. No; we work together on that in checking those accounts and watch them together.

Q. Would you consult him if the account was behind in payment before you shipped anything?

A. That is right.

Q. Is it somebody's job down there to check the bank statements each month?

A. Well, we have only one small account which covers—which we carry in one of the banks, and we usually check this on the month.

Q. Who does that?

A. Well, we check that generally together.

Q. Who?

A. Mr. Dougherty and I.

Q. Is it necessary down there to make out checks sometimes to pay bills?

A. Yes; sometimes. We pay two salesmen weekly by check and sometimes a freight bill and sometimes some other bills.

Q. Who generally prepares the stubs on those checks before the checks are written up?

A. I do that.

Q. Does it sometimes happen that goods such as express goods comes in collect so that someone would pay for them?

A. Yes.

Q. Who does that?

A. I pay those.

Q. Who prepares the monthly customer statements at your branch, statements of accounts due your company?

A. We have to work together on that. I prepare some of them and Miss Varnadoe prepares some.

Q. State whether the salesmen down there turn in collection reports of accounts collected.

A. They do.

Q. Who checks over those reports to see that the amount of cash and checks turned in agrees with the total amount which should be turned in?

A. I do.

Q. Now, Mr. White, is there any job you do down there regularly that you haven't described to me?

A. Well, I don't recall any special one. Of course, there is quite a number of things that come up every day, and there are certain things we do to straighten out and check up, such as credit memorandum and stuff like that and stuff returned, and things like that.

Q. When goods are returned do you check up to see why they are returned?

A. The stuff returned is put on the returned goods book. I check those returned goods and make the credit for them.

Q. Mr. White, when the shipping clerk is out to lunch and when he is out at other times, do you ever do any

work in the warehouse in connection with receiving or shipping goods?

A. I have done that; yes.

Q. How often does that happen?

A. Well, that might happen at any time. Of course, he goes out for his hour's lunch; we look out for him while he is out, Mr. Dougherty and myself.

Q. And wait on any customers that come in and receive any incoming shipments?

A. That is right.

Q. And if a shipment comes in while he is out to lunch, will you handle the goods?

A. I could check the goods and make a record of them there; yes.

Q. Those duties that you testified to, what part would you consider routine bookkeeping duties?

A. That is hard to say. I can't say on that.

Q. Maybe we can get at it another way. Of all the work you do, what part would you say is routine work?

A. Well, that is a matter I can't say and be positive about it.

Q. What part of your total time is spent in bookkeeping?

A. I don't do the bookkeeeping, I said.

Q. Some of those checks that you testified to, I call bookkeeping—such as preparing the statements. If that is not clear, what I mean by bookkeeping, it is not necessary for me—What part of your time is spent in clerical work, Mr. White?

A. We put in a full day. I would say all clerical work.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. I believe you said Miss Varnadoe makes the prices and extends the invoices and so forth?

A. She does very ltitle extending of invoices but—

Q. What is most of her work?

Mr. Shelton:

Let her finish, please, Mr. Kurz.

A. (Continued)—her work is setting up tickets for the previous day, making a recap of those tickets and at the same time showing or making a list to show the amount of sales by each salesman; then those are passed on to the posting machine.

Q. Who directs her as to that work?

A. Mr. Dougherty directs her. He is her director on that. If thre is anything I can—I help as much on that as I—we all have to work those things together. There are only three of us in the office, and we just kind of sit down but one individual and one man to be the sole advisor—we have to work together on those things.

Q. Did you ever tell her what to do about anything?

A. Yes.

Q. Does she do it?

A. Yes.

Q. Who employed Mr. Dougherty?

A. Mr. Dougherty?

Q. Have you ever employed anyone down there?

A. No, sir.

Q. Do you have any direction of the warehouse at all?

A. No, I don't, only in the general feeling of doing my duty and looking after things in general but just having special duties in connection with the warehouse. I don't have those duties.

Q. When Mr. Dougherty is out, who has charge of the office?

A. Well, Mr. Dougherty is not away very much. Of course, on week-ends being in the office there and keep after it—

Q. He is away sometimes, isn't he?

A. Yes. He has to go to lunch and be away for short periods.

Q. At this time do you have anything ever arise that requires some approval from someone?

A. Yes.

Q. Who does that approving generally?

A. I have to do the best I can with it.

Q. Who has charge of keeping up with the accounts of the branch?

A. Mr. Dougherty and I both watch those accounts.

Q. Do you ever tell the salesmen about following up some delinquent accounts?

A. I do.

Q. Isn't it a fact that you are primarily in charge of the cash and the accounts of the branches?

A. I am; yes.

Q. Do you have a regular method of following up past due accounts?

A. No. We watch over them as we go along and make statements through the collections of salesmen and checking over the salesmen's collections, and if we find some accounts that are past due or skipped an invoice or something like that we make a record and bring it to his attention.

Q. Do you ever tell the salesman or anyone else about following up a specific account and making collections?

A. I have.

Q. Do you ever exercise any authority over the shipments to customers whose accounts are in arrears?

A. No, I do not; that is Mr. Dougherty's—he does that.

Q. You never refused to let goods go out because the account was bad?

A. No, because he generally passes on those accounts. It has been the custom, and so he as a rule passes on all those accounts. He is familiar with the accounts more so probably than I am.

Q. Are you familiar with the accounts, too?

A. I handle them from day to day.

Q. It never happened that you called attention to the fact that some account is delinquent and did not pay—

A. Yes.

Q. What happens then?

A. Well, we generally look into it.

Q. Do you have any complaints from customers?

A. Naturally we do, from time to time.

Q. Do you have any connection with the handling of them?

A. I do.

Q. Do you try to make adjustments with them and satisfy them?

A. Yes.

Q. How many people are employed in the warehouse?

A. We have one shipping clerk and two regular warehouse men now. Sometimes we have to call somebody to give us a little help.

Q. When the shipping clerk is out for lunch or otherwise, do you have any duties in connection with the direction of those employees?

A. If a customer calls and wants some stuff or we have to handle some stuff, naturally we are called on to do it.

Q. Who does the physical work of handling?

A. We have some negroes there does that.

Q. Do you direct them in that case as to that particular work?

A. Yes.

Q. As I understand it when an order is made for goods, the salesman writes out the order to Mr. Dougherty usually, is that right?

A. The salesman writes out the orders and brings them in.

Q. Who okays the space there for credit?

A. Mr. Dougherty does that. He generally looks through those and okays them.

Q. Do you ever do that?

A. No.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Shelton:

Q. Mr. White, will you state whether or not Mr. Dougherty ever takes any outside sales?

A. No—Mr. Dougherty—of course, we both take phone orders.

Q. I am talking about outside? Outside from—

A. He does not do that.

Q. Since he does not make outside sales, is there any reason for him to be often out?

A. I don't know of any reason, but he is not away but very little.

Q. He is generally there nearly all of the time?

A. Yes.

Q. State whether or not you generally spend nearly all your time in the office?

A. I do.

Q. You don't have much occasion to go into the warehouse?

A. No, sir.

Q. And then you don't have much occasion to tell anybody in the warehouse what to do?

A. No, I don't because that is generally passed on to the shipping cerk, the handling of the warehouse stuff.

Q. Does Mr. Dougherty also tell the warehouse employees what to do?

A. He has that privilege, of course, but that is generally passed on, as I say, to the shipping clerk as to what he wants and the routine of work and so on.

Q. If a complaint comes in and you and Mr. Dougherty are both there, who usually takes the complaint?

A. Either one of us. Generally we talk it over together and have an understanding and get it straightened out. Maybe one or the other would know something in connection with it and we generally, if any complaint comes in, we generally talk it over and get it straightened out.

Q. Who makes the final decision after you talk it over?

A. There are some things I could make final; I could look up something and get it adjusted myself. If it was something that required it, I could get Mr. Dougherty to pass on it.

The Court:

Is it your plan to go over this repetition completely?

Mr. Shelton:

Your Honor, I believe that is all we have.

The Court:

We will take a recess until two o'clock.

(Thereupon, at 12:50 o'clock P. M., June 18, 1946, the Court took a recess until 2:00 o'clock P. M. the same day.)

June 18, 1946, 2:00 o'clock P. M.

Afternoon Session.

Thereupon, W. O. MATHIS was called as a witness on behalf of the Plaintiff and being first duly sworn, testified as follows:

269 Direct Examination.

By Mr. Shelton:

Q. You are Mr. W. O. Mathis?

A. Yes.

Q. Mr. Mathis, you were employed two separate times by the Southern Industries Company, were you not?

A. Yes.

Q. And the Southern Industries Company is the manufacturing company which manufactures goods for Jacksonville Paper Company?

A. Yes.

Q. What month did you go back to work with the company the second time?

A. In September, 1944.

Q. State whether or not you have been continuously employed there since that time?

A. Yes.

Q. Will you tell the Court, please, Mr. Mathis, what your job has been?

A. Yes. It has been operating and upkeep of machinery, coat hanger machines.

Q. Will you tell us what that machinery is used for?

A. It is used for the manufacturing of coat hangers.

Q. When you came back in 1944 who hired you, Mr. Mathis?

A. Mr. C. G. McGehee.

Q. Did he tell you what you would be paid?

A. Yes.

Q. What did he tell you?

A. He hired me, $40.00 a week and four cents a thousand production commission.

Q. At the time you came back to work will you state whether or not a day shift and a night shift were both being operated in the coat hanger department?

A. The night shift started as soon as we could get someone to put on the night shift.

By the Court:

Q. You organized a night shift yourself?

A. Yes.

By Mr. Shelton:

Q. How many men worked on the night shift?

A. Just one.

Q. State whether or not that was a different employee from time to time?

A. Well, they had two employees since I came back in 1944.

Q. Two different ones?

A. Yes.

Q. There has only been one employee on the night shift?

A. That is right.

Q. Has anyone worked on the day shift other than you?

A. No, sir.

Q. What duties have you had with respect to the night shift?

A. I am subject to call at night for machinery repair.

Q. On the average, how many times a week are you called back at night for repairs to machinery?

A. Possibly there would be a week that I am not called back, and maybe the next week I am called three or four times.

Q. Could you strike an average and say how many times on the average you would be called back at night to repair machines?

A. I would say about four times a week.

Q. About how long does any of those repair jobs take on the average, Mr. Mathis?

A. That is hard to say. Sometimes it is only just a few minutes, and sometimes it takes an hour.

Q. Can you strike any kind of average of the time required for a repair job?

A. Forty-five minutes or an hour possibly, on the average.

Q. During the period since you came back to work what has been your job on the day shift?

A. Operating those machines, coat hanger machines.

Q. Have you done anything else on the day shift?

A. No, sir.

Q. If a machine breakdown occurs on the day shift, who repairs the machine?

A. I repair it.

Q. I understand you to say you do all the repairing, both day and night.

A. Yes.

Q. When there is a breakdown?

A. Yes.

Q. When you first started back, have you testified how much—you testified how much Mr. McGehee said you would be paid?

A. Yes.

Q. That commission that you testified to or that payment of so much a thousand, would you state whether or not that applied to both the day shift and the night shift?

A. Four cents a thousand for each shift for a period of time.

Q. For all the coat hangers turned out by you and the night man?

A. Yes.

Q. Did there later come a time when your basis of payment was changed?

A. Yes.

Q. When was that?

A. That was in January, 1945, I believe.

Q. Three or four months after you started back?

A. Yes.

Q. What happened then?

A. I got on piece work instead of straight salary.

Q. With whom did you make the piece work arrangement?

A. Mr. McGehee.

Q. What was the arrangement?

A. The arrangement was I got fifty cents a thousand for my shift and four cents a thousand for the other shift at the time.

Q. After that change in payment state whether or not your duties on the day shift and the night shift was the same as before?

A. It was the same, sir.

Q. State whether or not both before and after that change in pay a record was kept whether or not you worked at night?

A. No, sir, I won't say. There was sometimes I would punch the clock. When I was not right in line with it I would do my work and sometimes I would not go by the clock.

Q. Were there more times that you did not punch or did punch at night?

A. I imagine more I did not punch.

Q. Since the records won't show these hours worked at night, let us see if I can get it as close as possible, based on your statement as to how much time was consumed. You testified, I believe; on the average it takes around forty-five minutes to a repair job at night?

A. Yes.

Q. Would you do that from—

Mr. Kurz:

I object to a leading question.

The Court:

He has testified that himself.

Mr. Shelton:

If the Court please, I believe that the record would show that he said from forty-five minutes to an hour, and I was only summing up, but if your Honor would rather I would just skip it and leave it on the record.

The Court:

I am going to inquire what is the purpose of the particular examination now as to how much he worked at night?

Mr. Shelton:

If the Court please, he was paid from the first period a salary plus a piece rate, a second rate, a piece rate, and it is the plaintiff's contention that no overtime was paid and that overtime is due.

By the Court:

Q. You testified that when you were employed in the beginning that you worked for $40.00 a week plus a small commission?

A. Yes, your Honor.

Q. Were any hours specified that you were required to work for that $40.00 a week?

A. No, sir.

Q. There were not?

A. No, sir.

Q. Was it governed by the time you put in?

A. Your Honor, it was—I was on what you consider call.

Q. You were talking about a day shift and night shift. How many were on that day shift?

A. Just one, sir.

Q. Who was that?

A. Myself.

Q. You talked about a night shift of one man?

A. Yes.

Q. Was that day shift and night shift organized so that each of you worked twelve hours to keep all the machinery going?

A. No, sir; we did not work twelve hours. We worked nine and a half hours.

Q. Each of you worked nine and a half hours?

Q. By whose authority was that nine and a half hours established?

A. Mr. McGehee.

Q. Then there was something specific as to the time you were required to work?

A. Mr. McGehee, your Honor, said that for us to work any overtime that we wished.

Q. He said that you could work any overtime that you wished?

A. Yes.

Q. Did he pay you for it?

A. It was considered straight piece price—I mean, piece work.

Q. That was after you went on the straight piece work basis. What did you do when you went on the salary basis?

A. There was a period of about two weeks that I worked overtime and I was paid $40.00, average of seventy-five thousand, average $40.00, and after that I got forty cents a thousand for all over one hundred and fifty cases, for overtime, which was seventy-five thousand.

Q. When you changed from your straight salary plus a small commission on a piece work basis, what effect did it have on your compensation?

A. I got my commission on my second shift just the same.

Q. I am talking about what effect did it have on the total compensation you received for the time you worked? Did you make more money or less?

A. Yes; I made more money.

Q. Then that change from the salary basis to the piece work basis increased your pay?

A. Yes.

Q. You worked more than forty hours a week?

A. Yes.

Q. And you received a flat compensation for whatever time you worked?

A. Yes.

The Court:

This is not a suit on behalf of any of the employees of this company to recover compensation for their overtime, and I am not entertaining such a suit or any suit of that character that would show overtime if they had a claim against the company.

Mr. Shelton:

The petition claims that the defendants-employers owe the difference between the wages paid and which should have been paid since the date the decree became effective.

The Court:

You are suing in behalf of the employees?

Mr. Shelton:

To correct the violation of the judgments and to do now what should have been done before.

The Court:

What is that?

Mr. Downing:

May I say this is a civil contempt proceeding and the defendants are continuing in contempt of Court if this is a violation until such time as they are paid what they should have been paid. That is the remedial relief, among other things, which the administrator has requested and which the Court can require in a civil contempt proceeding—that the defendant do under this decree what it should have done.

The Court:

You gentlemen are in here asking this Court to determine compensation that is due to these employees of the company and enter a judgment for it?

Mr. Downing:

Your Honor, we say that these violations have existed and the defendants actually remain in contempt of Court until the wages are paid which should have been paid and that your Honor should require compliance with the Act and has the power to require them to make good their past violations. That is not a novel prayer in civil contempts. All of our civil contempts have such a rule. As a matter of fact, many of our criminal Courts. The Courts require payment of back wages. It is a most appropriate remedy in civil contempt.

The Court:

How are you going to handle the matter of all the employees. Am I going to have to sit here from day to day and let every employee come up here to testify to the hours he worked?

Mr. Downing:

I don't think so. You have first the accumulated hours plan. Once your Honor decides that is a violation either the defendant or the administrator's inspectors can make those calculations from the books of the company.

We have the bonus plan. Those calculations could simply be made from the defendant's records.

In the case of misclassified employees, there is another way of putting on their testimony, and their testimony will show all the hours they work and there will be no difficulty there.

The Court:

Those who are classified by the company as supervising employees are exempt from the Act?

Mr. Downing:

Yes.

The Court:

You have all those here?

Mr. Downing:

They will be here in the record, and generally as I say their testimony will be that they work a normal schedule of hours.

In a few cases the employees' testimony will be necessary to establish what hours they work, but by and large the calculation can be made from the defendant's records on your Honor's finding that this plan or that plan is not in compliance with the Act.

The Court:

There are three main issues as I can gather from this case this far between the Government on one side and the defendant on the other.

One of them is this accumulated hour plan, one is the bonus plan and the third one is whether or not certain employees are subject to the Act, which you claim they are and the company denies they are. After the Court has determined these three questions, what is there—after the company is adjudicated—to keep the company complying with the Court order?

Mr. Shelton:

The contempt continues until it is purged, and the way to purge it is to pay the difference between the wages paid and the wages due.

The Court:

I am not very much impressed with that part of it.

By Mr. Shelton:

Q. Mr. Mathis, the Court asked you about your hours and you replied a while ago giving the salary paid nine and a half hours a day. Didn't you mean that that schedule obtained from Monday through Friday?

A. Yes.

Q. What was the Saturday schedule of hours?

A. It was included in that, sir.

Q. Do I understand that your regular daytime schedule was nine and a half hours a day six days a week?

A. Yes, and four on Saturday.

Q. Coming back to where I was, you meant that the nine and a half hour schedule was from Monday through Friday?

Mr. Kurz:

If the Court please, I think counsel keeps on leading the witness.

Q. Your schedule of nine and a half hours a day was only from Monday to Friday?

A. Yes.

Q. Five days a week?

A. Yes.

Q. What was the Saturday schedule?

A. Four hours.

Q. Five times nine and a half would be forty-seven and a half hours from Monday through Friday?

A. Yes.

Q. Plus four hours for Saturday; wouldn't that be fifty-one and a half hours a week?

A. Yes.

Q. Will you state, Mr. Mathis, whether when you started on the piece work rate that you testified to, on the fifty thousand coat hangers, there was no change in your hours?

A. No, sir.

Q. In response to a question by the Court, I believe you made some reference to the piece rate by the case. How many coat hangers in a case?

A. Five hundred.

Q. Took the rate per thousand and transferred it into the rate by the case, and you multiplied by two?

A. Yes.

Q. Will you state how you worked on the day shift compared with the work on the night, the night man on the night shift on this coat hanger work?

A. Well, I operate the machines in the daytime until six o'clock in the afternoon and he comes in and operates every night.

Q. You do the operating in the daytime and he does it at night?

A. Yes.

Q. And you do the repair work on both shifts?

A. Yes.

Q. Will you state, Mr. Mathis, whether at the time that you were changed from the salary plus commission basis to the straight piece rate basis there was any change in your duties?

A. No, sir.

Q. After you started on the straight piece rate, state whether or not there were sometimes that you failed to punch the time clock?

A. Possibly there are, sir.

Q. State whether or not in most cases the time clock will show the hours you worked?

A. Yes, as a general rule it will. There might be once in a great while I would forget to punch the clock, but generally I clocked in and out.

Q. In order to get at what your wages were when you did not clock in, I would like to ask you after you were put on a piece rate how many thousand coat hangers could you ordinarily produce in an hour?

A. Two thousand.

Q. At the fifty cents a thousand rate that would be at the rate of a dollar an hour?

A. Yes.

Q. You testified, I believe, that you were not paid any differently on the piece rate for hours before forty and after forty?

A. That is right.

Q. Will you state whether or not social security taxes were taken out of the salary when you were on the salary plus commission basis?

A. Yes.

Q. Were they taken out of the piece rate after you were put on the piece rate basis?

A. Yes.

Q. Was withholding tax deducted?

A. Yes.

Q. Was it deducted in both periods?

A. Yes.

Q. Will you state who owned the machines down there on which you worked?

A. The Southern Industries Company.

Q. Will you state whether or not you supplied any of your own tools for that job?

A. No, sir, did not supply—

Q. Did the other piece worker who worked at night, whichever one it was working, supply any of his tools?

A. No, sir.

Q. You are testifying that you repaired the machines at night when there was a breakdown?

A. Yes.

Q. Will you state whether or not you went there at night at other times except to do that repair work?

A. When this boy first started working I would pass by at night before I went to bed a few nights to see how he was getting along when I was not working.

Q. How long did that go on?

A. For possibly a week.

Q. I believe you testified, Mr. Mathis, as to whether after you were transferred to the piece rate you continued to get a commission on the night shift and that you continued to?

A. Yes.

Q. Will you state whether or not you continued to get it at the same rate that you got when you were paid a salary?

A. No, sir. Later on I got eight cents a thousand on the night shift instead of four.

Q. Do I understand from that that there was a period in the beginning when you were on the piece rate when you still got four cents a thousand?

A. Yes.

Q. Later on, you were raised to eight cents a thousand?

A. Yes.

Q. Now, when you were employed down there in 1944 did you sign any kind of contract with the company?

A. No, sir.

Q. Was any slip or memorandum made up, conditions of employment?

A. Nothing, sir, but the slip that Mr. C. G. gave me to take in, to put me on the payroll.

Q. What did that slip say?

A. Said I was supposed to get forty dollars a week and four cents a thousand commission.

Q. Was anything else on it that you remember?

A. No, sir; I do not believe so.

Q. At the time you were transferred from salary plus commission to the piece rate, was there any contract entered into?

A. No, sir.

Q. I believe you testified you had a talk with Mr. McGehee about that change?

A. Yes.

Q. Will you state what that conversation was between you and Mr. C. G. McGehee at that time?

A. Well, I asked him for piece work and we talked it over out there, and finally I agreed on my change from straight time to piece work.

Q. Was that all that was said as far as you can recall?

A. Yes, I believe it was.

Q. Mr. Mathis, aside from the rate of pay, was there any change in your conditions of employment when you were transferred to a straight piece rate basis?

A. No, sir.

Q. Mr. Mathis, who were the two successive night men who worked in the coat hanger department?

A. One was Higginbothum, and Mr. Smith—E. C. Smith.

Q. When you speak of Higginbothum, would you state his full name if you know it?

A. Melvin Higginbothum.

Q. What hours did he work at night?

A. He worked from six in the afternoon until 4:30 at night.

Q. How many days a week?

A. Five.

Q. Did he take a meal period out?

A. Yes, I imagine he did. Now, I don't know about that.

Q. What hours did he work on Saturday?

A. He never worked on Saturday.

Q. He worked five days on that schedule you testified to?

A. Yes.

Q. Did he work any other day?

A. No, sir.

Q. Just five days a week?

A. Yes.

Q. This second night man, Smith—what was his schedule the nights from Monday until Friday

A. Sometimes Mr. Smith would work all night, whenever we had the machines running; if he did not have any trouble he would be there some mornings when I got down there.

Q. What time was that, that you got there?

A. From seven to eight; around seven-thirty.

Q. Did he work five nights a week or did he work more than five?

A. Usually more than five.

Q. Six or seven?

A. Six and sometimes on Sunday.

By the Court:

Q. He was strictly on a piece work basis?

A. Yes.

By Mr. Shelton:

Q. Do you know whether or not he punched in and out on the time clock, Mr. Mathis?

A. He punched in and out all except when he worked on Sunday; he could not punch on Sunday.

Q. Why couldn't he punch on Sunday?

A. Not a day on there for Sunday.

Q. Did he have any sheet to record the scheduled hours on?

A. No.

Q. No sheet computation there that he could have recorded that on?

A. No, sir.

Q. Your duty was also with respect to repairing of machines at night when you were on salary. State whether or not you continued to do the same thing after you were transferred to the piece rate?

A. Yes.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. I believe you said that you organized the night shift in this coat hanger department?

A. I put the man on. I hired the man.

Q You hired him?

A. Yes.

Q. And Mr. Higginbothum and Mr. Smith were the only two people who worked on the night shift?

A. Up until now. There is another boy working now, been working about three weeks.

Q. You mean Mr. Higginbothum is no longer there?

A. He is not with me any more.

Q. Who hired the new man?

A. I hired him.

Q. Do you have control over what they do about hours of work and so forth?

A. Well, I do the hiring.

Q. Do you tell them what their duties are?

A. Yes.

Q. Do you tell them what their compensation is?

A. Yes.

Q. Does anybody else try to exercise any control over them?

A. No, sir.

Q. With reference to the repairs that you make at night you said that those repairs might take a few minutes to an hour?

A. They vary, sir, according to what is wrong with the machine. Sometimes they get jammed up, and I have to go over and they take some time.

Q. You do all of that?

A. Yes.

Q. Is there a machinist there who helps you with that?

A. A machinist in the daytime who does the welding in case a piece breaks or—

Q. Does he do any work on the machine except to replace the parts?

A. No, sir.

Q. And on the coat hangers produced by the night shift you get a commission?

A. Yes.

Q. Now eight cents a thousand?

A. Yes.

Q. How long has that been in effect?

A. I don't know sir, just how long it has been.

Q. Does the night man have a key to the plant?

A. No, sir; he don't have one now.

Q. Did you furnish him one?

A. I furnished Mr. Smith one. He had the one that I had. Mr. Smith had the key, but the night man now hasn't got a key to the plant.

Q. Anyone else out there at night? Does the plant operate at night in any other department?

A. Yes.

Q. What department?

A. Envelope and book departments.

Q. I believe you did state that you are in full charge of the operation of the coat hanger plant or department?

A. Yes.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Shelton:

Q. Mr. Mathis, when you were paid on a salary basis, who was your boss?

A. Mr. McGehee, sir.

Q. Which Mr. McGehee?

A. C. G. McGehee.

Q. When you were transferred to the straight piece rate who was your boss?

A. Mr. McGehee was.

Q. Have you, or has the company paid those night workers who did night coat hanger work?

A. The company.

Q. State whether or not there is anyone there during the daytime whose work you supervised?

A. No, sir.

Mr. Shelton:
Your witness.

Mr. Kurz:
No questions.

Thereupon, JOE MATHIS was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

292 Direct Examination.

By Mr. Shelton:

Q. You are Mr. Joe Mathis?

A. Yes.

Q. Are you now employed by the Southern Industries?

A. No, sir.

Q. Were you formerly?

A. Yes.

Q. As well as you remember, when did you leave the company, Mr. Mathis?

A. It was somewhere in the latter part of last year. I think about November. I am not sure.

Q. For quite a while prior to that time that you left the company did you have a single job?

A. No, sir; not a single job.

Q. Did you have some kind of job?

A. I had one, some kind of job; yes.

Q. What was it called?

A. Paste maker.

Q. About how long had you been there doing that before you left the company?

A. I suppose it was around four or five years.

Q. What I will ask you hereafter will just be related

to the period when you were paste maker at the Southern Industries.

State whether or not there was a time clock at the company for several years prior to the time you left?

A. Yes; there was a time clock there.

Q. State whether or not you punched in and out on that clock?

A. Yes; we are supposed to punch a clock four times a day.

Q. State whether or not you ever failed to punch the clock?

A. Yes, I did.

Q. Do you remember any particular time when you failed to punch it?

A. Well, I don't remember the date but I remember a time or two; I remember several times I forgot to punch the clock, but I don't know what dates they were or anything like that.

Q. I am speaking of an exact time and in connection with one of those times did you have a conversation with one of the foremen down there about your failure to punch?

A. Yes.

Q. Will you state who that foreman was?

A. Mr. Parisey.

Q. Will you state how you happened to have that conversation with Mr. Parisey?

A. Well, I forgot to punch the clock in that morning and at twelve o'clock noon when I went to punch it, I saw I had not punched in. I went to Mr. Parisey and asked him to fix the clock so I could punch for that morning. Of course, he said he could not do it. I said: "You have done it. You have fixed it for others, why not fix it for me?"

"We have orders not to make any pencil marks on the time sheets."

Of course, we talked on and I was pretty "hot" about it. That is all there was to it, and I went to work.

Q. And did Mr. Parisey know whether you worked that six hours?

A. He should have known. He had been seeing me that morning.

Q. Did you get paid for the six hours?

A. No, sir.

Q. Will you state whether or not there were other similar occasions when you failed to punch in or punch out?

A. Yes, there were other times, but I think that is the onliest time I lost as much as six or six and a half hours, or whatever it was.

Q. Will you state whether there were any times when you lost an afternoon pay through failure to punch in or punch out?

A. Well, yes. One time I went to Mr. Stanton. I believe I asked him why was I short, and he went and got the time sheet and showed me I failed to punch out one afternoon, and I punched in at 12:30. I failed to punch out in the afternoon. I lost that time. I think it was three-thirty.

The Court:

I gather from the testimony of other witnesses in the case and the testimony of this witness that this witness was an hourly employee.

Mr. Shelton:

That is right, your Honor.

The Court:

Let the record show that.

Q. Were you paid on an hourly basis, hourly rate basis, Mr. Mathis?

A. Yes.

Q. Now, in addition to the times you testified about when you lost a whole shift, will you state whether or not whether there were any period when you failed to get paid for part of a shift through failure to punch or through punching late?

A. Yes.

Q. What?

A. Several times I lost a little time along like that.

Q. What happened?

A. I may go to work a little before time to punch in and then I forgot to punch in until it was after time to punch in.

Q. What recalled it to your mind that you had not punched in?

A. Sometimes some of them—probably Mr. Parisey or some of the girls or boys would punch the clock and they would tell me. I thought I had, but I had not.

Q. If Mr. Parisey came, he would know that you already had been at work?

A. Why, sure.

Q. State whether or not there was any rule about the earliest time before the regular shift that an employee could punch in?

A. It was generally understood you could not punch the clock to go to work any earlier than fifteen minutes before the regular work time.

Q. State whether or not you sometimes started to work before a quarter hour ahead of the regular shift?

A. Well, I did.

Q. When you did that, when would you punch in?

A. I try to punch in somewhere between fifteen minutes of the regular time. If I forgot, sometimes that would be afterwards.

Q. Would you get paid for the time you worked before a quarter hour before the regular shift?

A. No, sir; from the time I punched the clock.

Q. State whether or not it was a regular occurrence for you to go to work more than a quarter hour before the shift started?

A. Yes.

Mr. Kurz:

If your Honor please, counsel is asking leading questions.

The Court:

Yes; I agree with you.

Mr. Shelton:

I said "state whether or not".

The Court:

Let him answer that. Answer the question.

A. Well, Mr. Parisey gave me orders to start to work before the regular crew did, to get the machines ready so they could start at the regular time. That is when I started to work before the regular hours.

Q. Now, what about the rule that you testified to about not getting paid when you did not punch in or out, do you know whether or not that applied to other employees?

A. Yes; if they did not punch; if it was not on the clock you did not get paid.

Q. Do you know of any case where other employees lost time and complained about it to the foreman?

Mr. Kurz:

That calls for hearsay.

The Court:

I don't see where that testimony would be of any value in this case. There is no controversy so far as the de-

fendant is concerned that the clock is their pay roll record, and if an employee did not punch the clock it is their "hard luck". Whether or not that is a violation of this injunctive order is a question I have to decide. There has been testimony that he was not paid when he did not punch the clock.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. Mr. Mathis, you were a paste maker out there four or five years?

A. Yes; I don't remember just how many years. A good while.

Q. I believe you said that there was one morning that you failed to punch in and you lost time?

A. Yes, I think it was the morning; part of the day, because I get more hours in the morning.

Q. I believe you said there was one occasion in the afternoon?

A. Yes.

Q. When you failed to punch?

A. Yes.

Q. You mentioned in addition to that that there were several other times when you lost a little time. How many times all together would you say in the course of this—

A. I would not say because I do not have any idea.

Q. Would it be an average of once every month?

A. Well, I don't know about that. I could not—there is no way to guess how many times I failed to punch out; that is the truth.

Q. Can you recall any particular instance when that happened?

A. Yes; I can remember several times I forgot to punch or for maybe fifteen or thirteen or something like that, hour and a half or maybe an hour or maybe two hours. I could not remember the day or anything like that. I have had them come and tell me I did not punch. He said: "You did not punch out yourself."

Q. There wasn't any effort on the part of the company to keep you from punching?

A. No, sir.

Q. How many employees in the department did Mr. Parisey have supervision of?

A. I don't know, sir. I don't know how many. A good many of them. More than there is in the rest all together, I am satisfied.

Q. If Mr. Parisey noticed that you did not punch in, would he call your attention to it?

A. Yes; on this particular morning.

Q. And you did not know that you did not punch in?

A. He probably never noticed it.

By the Court:

Q. Can you punch out if you fail to punch in?

A. You punch out at twelve o'clock; punch in at seven.

Q. If you go in at seven and fail to punch in, could you punch out at twelve o'clock?

A. Yes.

Q. If you come in at two o'clock and punch in and then fail to punch out when you quit that night—

A. Yes.

Q. Does the company pay you for the whole day's work?

A. No, sir; they don't pay you for anything.

Q. How, then, do they find out when you quit work?

A. They don't know.

Q. When the error was in your favor, what did the company do about it?

A. The way you do, if you come in and did not punch in, in the morning, and punched out, they did not pay you. You had to have two punches to get paid for it.

Q. If you failed to punch—if you punched in at two o'clock and failed to punch when you quit at night would you lose that half day?

A. Yes.

Q. The company got the "break", whichever way it went?

A. You had to have two punches.

Q. To get compensation?

A. If you punched in and did not punch out, you lost out. If you punched out and did not punch in, you lost out.

Q. You lost both ways?

A. Yes.

By Mr. Kurz:

Q. How often did you fail to punch out, Mr. Mathis?

A. I think I told you just then, I don't know.

Q. I thought that was with reference to the punching in time?

A. No; I do not know. I can't remember. You might look over the records and tell the times I failed to punch.

Q. I thought you said on direct examination that you only lost one afternoon for failure to punch out?

A. No; I did not say that.

Q. How many?

A. I said I remembered one.

Q. How many afternoons did you lose for failure to punch out?

A. I don't know. I lost one.

Q. That is the only one you recall?
A. Only one I remember.

Mr Kurz:
That is all.

Mr Shelton:
That is all.

Thereupon, EDWARD C. KLEHM was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

302. Direct Examination.

By Mr. Shelton:
Q. You are Mr. Edward C. Klehm?
A. Yes.
Q. Mr. Klehm, approximately how long have you been employed by the Southern Industries?
A. About twelve years.
Q. State whether or not you are now a foreman in charge of a department?
A. Yes.
Q. Approximately how many years have you been in charge of that department?
A. I don't know about that. I imagine around six.
Q. Which department is that?
A. Envelope.
Q. On the average, about how many employees are employed in that department?
A. I would say about twelve.
Q. About twelve?
A. Yes.
Q. Does that include yourself?
A. No.

Q. Twelve besides you?

A. Yes.

Q. I wish you would tell the Court in a little detail, Mr. Klehm, what your duties are and what jobs you perform for the Southern Industries Company confining yourself to the period during which you have been foreman in the envelope department?

A. I don't understand the question.

Q. I am just interested in the period since you have been a foreman in the envelope department—during that time. Will you please tell the Court what your job is, what jobs you do?

A. Adjust machines, keep up repairs, hire and fire girls; just generally everything that has to be done.

Q. You have stated that you repair machines?

A. Yes.

Q. State whether or not you also operate machines?

A. You mean actually to run them?

Q. Actually run them yourself?

A. I operate them.

Q. You operate them?

A. Yes.

Q. Other times?

A. Girls operate the machines.

Q. In connection with repairs which you do on the machines, state whether or not after a machine is repaired, it is necessary to wait and see and watch it and see if it is running properly?

A. Yes.

Q. Do you have any other duties besides supervising and repairing machines and watching machines after they are repaired and running them while you repair them; any other duties you do around there?

A. I don't know; just one thing or another; cut paper; cook gum; whatever is to be done, if nobody is there, I have to do it.

Q. If there is nobody else to do it, you do it?

A. Yes.

Q. With respect to the paper cutting and machine repairing and watching the machines and other similar work that you do, will you estimate as well as you can what part of your time is devoted to that work?

A. All of it.

Q. All of it?

A. Yes.

Q. What part of your time do you spend supervising employees in your department?

A. I imagine they would run together.

Q. Can you make any separation as to the time that you are supervising and that you are not supervising?

A. It is kind of hard to divide that.

Q. When you are doing a machine repair job, do you repair machines or do you stop to tell other employees what to do? How does that work?

A. I haven't got anybody else to tell to do. The only thing, if a part is broken, it would go to the machine shop and have it welded as fast as it can be done and we put it back on and I adjust the machine. I do all that.

Q. State whether or not, aside from broken parts, all the machine repairing is done by you?

A. Yes.

Q. Unless you have actually a broken part and the machine is to be repaired, you repair it?

A. Yes.

Q. Can you state, Mr. Klehm, what part of your total working time has been in repairing machines and in watching them after you repair them to see that they run properly?

A. I could answer that if you let me answer it my own way.

Q. Go ahead.

A. I am running the place, running the machines, to take care of everything, and I am the only one there to do it. Whatever there is to do, I take care of it.

Q. You spoke of girls in your department?

A. Yes.

Q. Are you the only man that is employed in your department?

A. No, sir; I had a die cutter and a man in the warehouse grading stock.

Q. Two other men?

A. Yes.

Q. And besides you, the rest are girls?

A. Yes.

By the Court:

Q. How many machines do you operate?

A. About eight.

Q. Eight machines?

A. Yes.

By Mr. Shelton:

Q. What about the die cutter? Does he do anything besides cut dies?

A. That is all he does.

Q. When there is work around there that is too heavy for the women to do, who does it?

A. They are not required to do any real heavy work.

Q. Who does the heavy work?

A. The warehouse man. If he is not there whenever there is something to be done, I do it.

Q. You and the warehouse man have to do the heavy work that the girls can't do?

Mr. Kurz:

Counsel is leading the witness.

The Court:
He has a habit of exemplifying by repeating a good answer.

Mr. Shelton:
Thank you, your Honor.

The Court:
That is strictly not leading, though.

Q. Mr. Klehm, you have a time clock in your department?
A. Time clock there for all departments.
Q. Time clock there for all departments?
A. Yes.
Q. Do the employees in your department punch in and punch out on the clock?
A. Yes.
Q. State whether or not there have been occasions when an employee forgot to either punch in or punch out?
A. Yes; there has been several occasions of that.
Q. Do you have any instructions covering what happens in such cases?
A. No, I haven't any at all—just nothing you can do about it.
Q. Can you state a little more in detail what the instructions are as to what happens when an employee does not punch in or out?
A. If you come in and punch in and fail to punch out at night, you lose that time.
Q. Does the same thing apply to the afternoon shift?
A. Yes.
Q. To your knowledge, how long has that rule been in effect?
A. Actually got the time clock—I don't know the exact period of years.

Q. Can you make an estimate of the number of years?

A. No, sir; somewhere around three.

Q. Mr. Klehm, in cases where an employee in your department fails to punch in and punch out and in cases that you know that that employee has worked, could you certify to the payroll people that that time has actually been worked?

A. No, sir.

By the Court:

Q. Do you certify to the payroll people anything about the time employees work in your department?

A. When I first got the clock, when the ruling came up, we went in—

Q. That is not my question.

A. What?

Q. My question is: Do you have anything to do with certifying the hours worked by the employees in your department?

A. No, sir.

Q. The clock keeps that time?

A. Yes; the clock keeps its own record.

Q. The clock takes the official record?

A. Yes.

Q. That is the only record you have?

A. Yes.

By Mr. Shelton:

Q. Mr. Klehm, state whether or not now or in the past employees have ever come to work before the regular shift?

A. I don't understand the question.

Q. Have there been times when employees of the company went to work before the time the regular shift was to start and have started to work before the regular shift?

A. If they do, it would only be a minute or so before.

Q. Do you recall any time in the past when there was some discussion of that matter and some general change with respect to it?

A. When the union first got in there they used to go to work a few minutes before time. According to the ruling of the union, they could not do that any more.

Q. When the employees went to work earlier than the regular time, were they paid for that time?

A. Not as I know.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. I believe you said the time clock had been installed about three years?

A. I do not know exactly. I say approximately around that.

Q You stated there are approximately twelve employees in your department?

A. Yes.

Q. Is that envelope department a separate branch of the Southern Industries Company?

A. No, sir; it is just another department.

Q. It is a separate department?

A. Yes.

Q. Are you in charge of that, or someone else?

A. I am in charge of it.

Q. You hire and fire the girls?

A. Yes.

Q. You are responsible for the operation of it?

A. Yes.

Q. Now, with reference to those machines that are out there, does it require some skill to adjust them?

A. I don't know.

Q. Who does the adjusting of the machines?

A. I do.

Q. Can anybody do that?

A. If they are working on them and learn, I imagine they could.

Q. You have to know how, don't you?

A. Yes.

Q. Mr. Shelton asked you about the time you spent in supervision. Isn't it a fact that since you are there you are in charge and your supervision is necessary?

A. Yes.

Q. Do you recall how many occasions it came to your attention where employees failed to punch in or out?

A. I would not know the exact amount of that. A few of them. Quite a few.

Q. Does it happen every day?

A. No. Generally with people first starting to work there; those who have been there the first time. They usually get accustomed to it anyhow and don't forget it.

Q. Do you ever call it to the attention of any of them when they fail to check in?

A. If I catch it; yes.

Q. Would you have any way of knowing about what time anyone came to work in your department without that clock record?

A. If they came to work and punched out, it shows it.

Q. Suppose they failed to punch, would you know that later on or any time after that, at what time they did come to work?

A. Know definitely what time they came to work?

Q. Would you know, for instance, if they came in, say ten or fifteen minutes late?

A. Maybe not all of them. As a general rule I would know about what time.

Q. You can't say how often this matter of failure to punch in or out arises?

A. Sometimes it would go along two or three weeks without none of them arising. It seems to me when he starts it would be four or five in a row.

Q. How much time would be involved in that?

A. I haven't any idea.

Q. Would it usually be for a few minutes or how long a time?

A. No; for a whole morning or a whole afternoon.

Mr. Kurz:

That is all.

Mr. Shelton:

No questions.

Mr. Shelton:

I don't believe I showed the salary of that last employee, and I wonder if Mr. Kurz will admit that whatever the Government records show is correct.

Mr. Kurz:

He just stated the amount, $65.00.

Mr. Shelton:

Not that much. He got less than $15.00 a week. Mr. Klehm I am talking about.

Mr. Kurz:

Whatever the record shows.

Mr. Shelton:

We will get it, your Honor.

Thereupon, C. C. CANTRELL was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

313 Direct Examination.

By Mr. Shelton:

Q. You are Mr. C. C. Cantrell?

A. Yes.

Q. You are an employee of Southern Industries?

A. Yes

Q. How long have you been employed there?

A. Since 1938. There was a period of six months I was gone.

Q. About when did you return, Mr. Cantrell?

A. Latter part of May.

Q. What year?

A. 1945.

Q. Are you a foreman in one of the departments down there?

A. Yes.

Mr. Kurz:

I object to the question; calls for a conclusion.

Mr. Shelton:

I can ask him if he is in charge—

The Court:

You can ask him what his duties are. He has answered it.

Q. What department?

A. Envelope department.

Q. How long have you been in that department?

A. Since 1938.

Q. How long have you been in charge of it?

A. Since. 1938.

Q. You have been in charge the whole time?

A. Yes.

Q. I will ask you just about the periods since August 29, 1941, since you have been there. Will you tell the Court what your duties have been when you have been in charge of that department from August 29, 1941 up to now?

A. That is getting production and handling help.

Q. About how many employees are there in that department?

A. Twelve or thirteen, maybe.

Q. Including yourself?

A. Yes. Possibly fourteen sometimes.

Q. Are those employees mostly women or men?

A. Mostly women.

Q. How many women?

A. About seven.

Q. Remainder men?

A. Yes.

Q. What do the women do?

A. Well, it varies. Most every unit we make is a different operation. It would be pretty hard to go in detail. We have a machine out there, a banding machine—crew feeds and they do a good deal of hand work. All the hand work is done by them.

Q. Do I understand from what you say some of the operations are machine and some are hand operations?

A. Yes.

Q. About what part of the work is machine operation?

A. Sewing machines, composition books, stripping machines for tables; they have a banding machine for it; loose leaf work—

Q. What is the total number of machines in your department?

A. I would have to check that.

Q. Could you go over it in your mind and get a total?

A. About twelve.

Q. How many of those machines run full time?

A. The year around there are only two that is operating full time.

Q. Are some of the operations seasonal?

A. Production is heavier in the summer time.

Q. Heavier in summer?

A. Yes.

Q. And less heavy in winter?

A. Yes.

Q. On the average, how many of these machines would be operating on the average during the year?

A. There is one machine that operates constantly. One machine operates possibly nine or ten months a year. Two machines there.

Q. Maybe we could get at it this way: When you left the plant to come up here how many machines were operating in your department?

A. That is pretty confusing here. We make different numbers such as composition books, loose-leaf folders and tablets, each item consisting of a different process.

By the Court:

Q. But do you operate each one of those machines generally some time during the year?

A. No, sir. There is a machine shut down for a month or six weeks at a time.

Q. What type of machines are those and how many are there?

A. Sewing machine operates, I should say, two months a year.

Q. And the others a year—

A. Stripping machine.

Q. How many sewing machines?

A. One.

Q. What is another one?

A. Folding machine. One is the sewing machine, operates more; stripping machine, possibly three months.

Q. Are the rest of them used pretty generally every day?

A. Most every day; yes.

By Mr. Shelton:

Q. Mr. Cantrell, is it necessary to repair those machines?

A. Yes, there is breakdowns; yes.

Q. Who repairs them?

A. We have a machine shop. If it is machine work, the machine shop does it. If it is repairs and adjusting, I do it.

Q. What kind of repairs go to the machine shop, and what kind of repairs do you do yourself? If you can elaborate on it a little more, of which your duties consist.

A. If a part has to be rebuilt, to be made new or a piece broken that has to be welded, finished in that way, it goes to the machine shop.

Q. You give a job to the machine shop where rebuilding or welding is necessary?

A. Yes.

Q. Do you send any other type of job to machine shop?

A. They make some tools such as paper drills.

By the Court:

Q. All readjustments are done right on the ground in the shop?

A. Yes.

By Mr. Shelton:

Q. I believe you testified you do that yourself?

A. I do most of it.

Q. You have testified, I believe, that some hand work is done in your department?

A. Yes.

Q. State whether or not you yourself do any of that handwork?

A. No, sir.

Q. After a machine is repaired by you, state whether or not it is necessary to watch it for a while to see if it is running properly?

A. Yes.

Q. In addition to the repairing of the machines and watching after they are repaired or overhauled to see that they run properly, what other jobs do you do in your department?

A. We have various jobs of watching the stock and keeping it built up and wherever there might be a "bottle neck" I open it.

Q. Do you take inventories in your department?

A. Yes.

Q. Who does that?

A. Various ones from the office comes out to take inventory.

Q. State whether or not you help when such inventory is taken?

A. Yes.

Q. In breaking a "bottleneck" which you testified about, do you ever assist the employees in getting things moving?

A. I have.

Q. How do you do that?

A. Well, whatever might be necessary to do that; whatever process is the slowest, if I can help—

Q. How do you help?

A. I don't understand just what you mean.

Q. You say you speed it up. How do you speed it up, Do you do the same work that the employees do?

A. I have in cases; yes.

Q. State whether or not your employees are sometimes absent from work?

A. Yes.

Q. State whether or not it is sometimes necessary in such cases for you to operate a machine yourself?

A. Very seldom I took any machine all day to fulfill anyone's place.

Q. How often did you do that part of a day, Mr. Cantrell?

A. You stay by them all the time and as far as possible—possibly if a machine operator was out and was behind--for a couple of hours to catch up, you do so.

Q If he is behind, you mean, run his machine for an hour or two?

A. I have did that.

Q. Are there some types of machines where there is more than one machine—any type of machine that you have two or more than one in your department?

A. No, sir.

Q. Does that department operate in such a basis that you have to keep things in full operation? If one operation goes out, production goes ahead?

A. Yes.

Q. You testified about the repairing of machines and watching the repair and some work on taking inventory and some filling in for other employees?

A. Yes.

Q. What part of your time is the total time spent in those types of work?

A. I don't believe I could make a very definite statement there.

Q. Could you make it on a fraction and say what fractional part of your time is so spent?

A. No, sir.

Q. Can you tell the Court whether more or less than half your time is spent on those jobs I have enumerated?

A. I think so.

Q. Say what?

A. I think I am busy in processing work more than half the time.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. Mr. Cantrell, is the department in your charge a separate department of Southern Industries?

A. It is separated from the other departments.

Q. And do you have supervision of the production in that department?

A. Yes.

Q. Are you responsible to see that the production is kept up?

A. Yes.

Q. Do you hire and fire the employees in your department?

A. Yes.

Q. Do you supervise them during the whole time that you are there?

A. Yes.

Q. Does adjusting machines in that department require any special skill?

A. I should say "yes".

Q. And you do that work?

A. Yes.

Q. Do you usually spend your time in operating any of the machine yourself?

A. At times, yes; there are periods I do that.

Q. Is that when it is necessary because of some breakdown or some other condition that you find, in order to maintain production?

A. Various things could affect that, such as on some of the counting machines a heavy sheet slides or breaks down and there would be a machine that would only take so many pages and a large sheet can't—you naturally slow that process down.

Q. You mentioned about relieving "bottlenecks" in the operation?

A. Yes.

Q. Does that require skill and knowledge just as to how the entire operation should be conducted in order to relieve a situation of that kind?

A. Yes. Usually add one more worker to that particular job.

Q. You have to do that to synchronize your whole operation to keep it going smoothly?

A. Yes.

Q. What is your compensation?

A. $55.00 a week and ten cents on each thousand tablets.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Shelton:

Q. How long have you been getting $55.00 a week, Mr. Cantrell?

A. I could not give you the date.

Q. Before you got $55.00 a week, what was your salary immediately prior to that?

A. $50.00 a week, I think.

Q. If you remember, what was your compensation before that?

A. $44.00 a week.

Q. The company's records will show what actual salaries you got at various times?

A. Yes.

Mr. Shelton:
Anything further?

Mr. Kurz:
Nothing.

(Ten minute recess.)

Mr. Downing:
Your Honor, Mr. Shelton wishes to recall Mr. Klehm —just a question or two on salary.

Thereupon, EDWARD C. KLEHM, a witness on behalf of the plaintiff, was Recalled to the stand and testified as follows:

323 Direct Examination

By Mr. Shelton:

Q. Mr. Klehm, do you remember the time about the first of September of last year when Mr. Carter took a statement from you?

A. Yes.

Q. What were you being paid at that time?

A. $40.00 a week and commission.

Q. About how much did the commission amount to?

A. At that time averaged about $5.00 a week

Q. Did it ever amount to as much as $10.00 a week?

A. I don't think it ever went that high.
Q. On what basis was it?
A. Thirty cents a thousand.
Q. For what commodity?
A. A thousand envelopes.
Q. Turned out by any department?
A. No, sir; in my department.
Q. Thereafter, did you get a raise?
A. I quit there in September. A week before I quit I got a $10.00 raise.
Q. To how much?
A. $50.00.
Q. How long were you out?
A. For about six weeks.
Q. When you went back how much were you paid?
A. Sixty-five.
Q. Dollars a week?
A. Yes.
Q. You have been paid that since?
A. Ever since I been back.
Q. Mr. Klehm, was it about a year—the first of September last year—how long before that did you begin getting the salary of $40.00 a week?
A. I don't know.
Q. Had it been a long time or a short time?
A. I would say around—I haven't got an idea.

By the Court:
Q. Several years?
A. No, a year, I imagine.
Q. About a year?
A. Yes.

By Mr. Shelton:
Q. Immediately before that you got more or less an advance—
A. Previous to that?

Q. Yes.

A. The previous week? I haven't got any records or anything of that kind to check up. I don't recall.

By the Court:

Q. Would you remember if you got a decrease in pay?

A. I never got a decrease.

Q. You never got a decrease?

A. No, sir.

The Court:

Any questions?

Mr. Shelton:

That's all.

Mr. Kurz:

No questions.

Thereupon, LESLIE LEE RENSHAW was called as a witness on behalf of the plaintiff and being first duly sworn, testified as follows:

326 Direct Examination.

By Mr. Shelton:

Q. Mr. Renshaw, will you state your full name?

A. Leslie Lee Renshaw.

Q. Are you now employed by Southern Industries?

A. Yes.

Q. How long have you been employed there?

A. A little over four years.

Q. You remember a time when the question came up about employees starting to work before the regular starting hours?

A. Yes, I do.

Q. Will you tell the Court what happened at that time?

A. The best I remember there was—at that time I was president of the local union—and it was turned in to me by complaint by members against the other members and discussion was brought up at the regular meeting that night and at the hall, and some of the employees claimed they were forced to go to work—in other words—they were supposed or understood to get the machine ready before work time. They decided to penalize the ones for starting to work before time, and therefore they ceased to work before the regular work time.

By the Court:

Q. Did you prohibit the people that were supposed to get their machine in readiness for others to go to work a few minutes in advance of the others?

A. That seemed to be the result of it. Probably a few minutes, but it would not run into hours.

Q. The question I asked you was: Did you prohibit those men that were supposed to go to work in advance to get the machines in readiness for other employees to go to work at a fixed time, from going to work before the other employees were also permitted to go to work?

A. Yes.

Q. You did?

A. Yes.

Q. As a result of that, would you have other employees standing around idle on company's time while that employee was getting the machines in readiness?

A. No, sir; that did not come to that. I think they did permit some to go to work a few minutes earlier on the clock to get them in readiness before time.

Q. The point I am raising is: the Union did permit that so far as those employees were concerned?

A. Yes.

Q. There is one man who has been on the stand who testified he went to work in advance of the others and quitting in advance. Did you allow that as a union?

A. That was permitted. It was only the ones that came just five or eight or ten minutes—like that—ahead of time, that were not on pay.

Q. For that five or eight or ten minutes?

A. Yes.

By Mr. Shelton:

Q. Just to be sure that the record is clear. Mr. Renshaw, prior to the time this matter came up, had some employees started to work before the regular starting hour?

A. Yes.

Q. State whether or not when they started early in that manner they were paid from the time they started to work until the regular starting hour?

A. No, sir; they were paid from the regular starting hour.

Q. Although they had started to work a few minutes earlier?

A. Yes.

Mr. Shelton:

Your witness.

The Court:

I want to ask counsel for the Government a question so I can be sure I understand the purpose of this testimony.

Mr. Shelton:

Yes.

The Court:

Is the Government taking the position here that the Wage and Hour Law takes from employees the privilege of starting to work a little in advance of the fixed time without being compensated for it?

Mr. Shelton:

Plaintiff's position is if the employee started ten minutes ahead of the eight o'clock starting time, he is required to be paid for the ten minutes.

The Court:

It is the Government's position in this case that these regulations that the witness on the stand testified about—the rules adopted by the union—are those that have been adopted by the company.

Mr. Shelton:

We are concerned with the period before the union regulations went into effect—maybe five or ten minutes of noncompensated time.

The Court:

In the Wage and Hour Act.

Mr. Shelton:

If the union regulations were that all employees were to be paid for the work or that employees should stand around and not have work available, that is not the Government's position.

Mr. Downing:

The Wage and Hour Administrator is not concerned with enforcing the regulations adopted by the union. We are concerned in enforcing the Wage and Hour Act in accordance with the Courts' decisions and the Adminis-

trator's decisions for the administrative enforcement of certain administrative rules that he lays down for certain situations for his own administrative guide.

In this situation we are taking the same position with reference to this kind of violation as the Supreme Court has taken just a few days ago in the Mount Clements case. It has just come in the mail this morning, and we haven't had a chance to study it very carefully. It is in point with this identical situation, and we will be prepared to discuss it in more detail during the argument.

The Court:

Here we have testimony that it is necessary for certain employees to go to work ten or fifteen minutes in advance of the others in order to get the machines in readiness. Under the Wage and Hour Act, they could not do that?

Mr. Downing:

Yes, they could do that.

The Court:

Without compensation?

Mr. Downing:

They could do that. The Wage and Hour Act hasn't anything to do with what schedule they have—employees got to be paid for that time.

The Court:

Your point is this: That under the Wage and Hour Act an employee is prohibited from volunteering any of his time to his employers?

Mr. Downing:

I hesitate to make a categorical answer to that statement, your Honor. I say this: If the employee is work-

ing for his employer, if it is work time he should be paid for it. On the question of volunteer, this Act says if a man works, if the employer permits him or suffers him by acquiescence—the volunteer part is not material. The fact is he is working for the employer and does the employer suffer him to work that. That, we submit, is a parallel situation.

Cross Examination.

By Mr. Kurz:

Q. How many employees were required to go to work earlier than the regular commencement of the work day in order to adjust those machines?

A. I would not state the exact number because I don't know. It was turned over to me in the complaint. The practice was not mentioned.

The Court:

There is no testimony in the record so far that any employees were required to work in advance of the time,

Mr. Kurz.

Q. How many employees were involved in this union complaint?

A. I would not say exactly. There is a number of them. As far as the exact number, it was brought up openly. It was not a written complaint.

Q. You don't know what number of employees were involved?

A. No.

Q. Do you know for what periods of time they were supposed to report for work ahead of the regular commencement time?

A. As far as I know, the statement that was turned in, it was not any definite time on it.

Mr. Kurz:
That is all.

Mr. Shelton:
That is all.

Mr. Shelton:
At this time we wish to file formally with the Clerk the depositions taken at Savannah, at Tampa, and at St. Petersburg. We are filing these with you. We are not filing them in evidence at this time. They have not been filed at all with the Clerk. We simply want them filed and then we will offer them. These were taken by stipulation, your Honor, and for that reason we did not go through the formality of having the Court reporter mail them to the Clerk.

The Government now offers in evidence the depositions taken at the Savannah branch, the Tampa branch and the St. Petersburg branch and at the Tallahassee branch, and later depositions that have not been filed previously.

The Court:
Let them be received in evidence.

(The depositions referred to were filed in evidence.)

The Court:
Does that cover all the branches where you took depositions?

Mr. Downing:
No, we have piecemeal depositions on Orlando and Lakeland, depositions which the reporter has written up as part of Orlando. We do not have West Palm Beach. Neither has the Pensacola depositions taken come in.

They were taken a while ago. When these are received, we would like to offer them. I don't suppose they will come in before the end of this hearing, but we would like to reserve the right to offer them, file them with the Court reporter.

The Court:

What else do you have beyond the depositions in this—these—particular cases to offer?

Mr. Downing:

Your Honor, the Government would like to reserve the right to offer the payroll records of the defendant produced here for the purpose of enabling the Court to calculate the correct calculation in the back wages in the event the Court rules that any of the payments are illegal and that back wages are due the employee.

The Court:

You are not offering them at this time?

Mr. Downing:

I reserve the right to offer them.

The Court:

I think I could make a statement to clear up that part of it. You have certain basic legal questions that you are asking the Court to decide here?

Mr. Downing:

Yes.

The Court:

Insofar as the Court should decide that the practices of the company are in violation of the law and the wages were not being paid in accordance with the Wage and

Hour Act, the groups or classes of employees benefited by that part of the decision, the company, of course, in a civil contempt proceeding would be disposed to divest itself of this contempt; if that had to be done, unless the matter could be worked out and straightened out by consent of the parties and a report made to the Court. If that can't be done, the Court would be required to make an investigation along that line, appoint some representative or auditor to do the work and not sit here and hear testimony himself on that point.

Mr. Downing:

I would suggest I think the computation would be rather easy.

The Court:

I don't anticipate the Court or the Government or the employees of the company having any controversy in adjusting the differences when this case is finally decided and the company nailed down to some legal, controlling principles. I do not think we will have any trouble.

Mr. Downing:

I would like to just—if it is not out of order—I hope the Court's mind does not crystalize contrary to our position with reference to the back wages and I think we could produce to your Honor at an appropriate time in the argument our authorities, which will establish to your Honor's satisfaction that it is entirely proper for the Court in a proceeding such as this, of this kind, to require the payment of the back wages.

Mr. Shelton:

May we have an opportunity at some future time to submit other cases which we think are pertinent?

The Court:
You will have that right. What further testimony does the Government have?

Mr. Shelton:
I assume the record shows the Government is reserving the right to offer these records in the event it becomes necessary for your Honor to see or to refer to them in connection with the computations.

The Court:
You will be permitted to offer additional depositions as a part of the record, when they arrive, and you will be permitted to go into the payroll records to the extent that that might be necessary before this case is closed. With that, does the Government have any further testimony?

Mr. Downing:
Your Honor, I believe—I don't recall—there were certain things that Mr. Reinoehl was to produce. I think he has produced everything except what you have excused with the exception of the allowable hours summary. May I inquire in open Court whether you have finished that?

Mr. Reinoehl:
What was that?

Mr. Downing:
The allowable hours.

Mr. Reinoehl:
I don't have it.

The Court:
You will have that by morning?

Mr. Reinoehl:

Yes.

Mr. Downing:

In connection with the depositions which we have offered, we are also offering—different exhibits are filed. For the most part, they are simply time sheets and employment notices, and I assume there is no objection to those.

The Court:

Are there any of those exhibits to which objections was made at the time they were offered in evidence?

Mr. Downing:

I think Mr. Kurz made technical objection because he was not satisfied the copy was a true copy.

The Court:

Otherwise, if there are any objections to any of that testimony in the depositions taken at the time that the defense appears to stand upon and wants to urge on the Court, the Court will reserve to the defense the right to do that. What is your situation with reference to the introduction of testimony?

Mr. Kurz:

I believe we would save the time of the Court if we could get things in shape and be ready to proceed in the morning.

The Court:

You are not going to have an opportunity to proceed until eleven o'clock tomorrow morning, but I want to inquire whether you will be ready to go on tomorrow.

Mr. Kurz:

If we start at eleven o'clock, your Honor, I believe that we could still finish tomorrow afternoon.

The Court:

The three questions are:

1. The accumulated hours plan.

2. Misclassified employees and executive and administrative employees.

3. The bonus plan.

Court will be in recess until eleven o'clock tomorrow morning.

(Thereupon at 4:15 o'clock P. M., June 18, 1946, the Court took a recess until 11:00 o'clock A. M. the next day.).

Jacksonville, Florida, June 19, 1946,
11:00 o'clock A. M.

Hearing resumed.

Appearances: Same as heretofore noted.

The Court:

You have one more statement, Mr. Downing, that you wanted to put in this morning. Have you got it?

Mr. Downing:

If Mr. Reinoehl has completed it.

Mr. Reinoehl:

Yes.

Mr. Downing:

We now offer in evidence the typed summary prepared and completed by Mr. Reinoehl, offered as Government's Exhibit 5 for Identification.

The Court:

This was only filed for identification?

Mr. Downing:

That is right.

Mr. Kurz:

To this summary?

The Court:

Yes.

Mr. Kurz:

Let me ask Mr. Reinoehl a question off the record?

(Discussion off the record.)

Mr. Kurz:

No objection.

The Court:

Let it be received in evidence.

(The paper was admitted in evidence and marked Government's Exhibit 5.)

Mr. Downing:

This is only a partial summary since it includes only employees in the Jacksonville home office and warehouse currently employed. We propose before the trial is finished to prepare a somewhat similar summary so far

as the home office and warehouse is concerned covering all the remainder of the employees. We will attend to that later.

The Court:
All right. Does the Government have any further testimony to offer at this time?

Mr. Downing:
No, your Honor.

The Court:
All right. Mr. Kurz, are you ready to proceed.

Mr. Kurz:
We are ready.

TESTIMONY OF THE DEFENDANTS.

339 Thereupon, TILLMAN CAVERT was called as a witness on behalf of the defendants, and being first duly sworn, testified as foll ws:

Direct Examination.

By Mr. Kurz:
Q. Your name?
A. Tillman Cavert.
Q. Mr. Cavert, where are you employed?
A. At the Jacksonville warehouse of the Jacksonville Paper Company.
Q. How long have you been employed there?
A. Since September 15, 1945.
Q. Is that since you came out of the service?
A. Practically so; yes.

Q. In what particular branch are you employed in the warehouse? In other words, are you in the same department with Mr. Fields, who testified here yesterday?

A. Yes.

Q. Will you state to the Court just what Mr. Fields' duties are, particularly in regard to directing other warehouse employees?

A. Well, primarily his duties are to handle what we call country shipments, that is, those shipments that go by railroad and express and truck line. In the loading of that merchandise and the directing of the employees there, or anything that is necessary to ship the freight. In addition to that he directs the handling of a certain number of city orders each day, also the loading of those orders on the truck, and in addition, general warehouse duties.

Q. Does he do any of the physical work of loading and unloading?

A. No, sir. Possibly at times he might just casually do some physical work but that is not very often. I would say generally he supervises it, that is, he directs the colored help what to do and he checks bills of lading and invoices and so forth.

Q. How many colored men are there employed under him, that is, to assist in that particular work?

A. None of them primarily for that particular work?

Q. They all help in the duties of the warehouse?

A. Yes. There are two or three that help him more than the others.

By the Court:

Q. How many in all do you have that come under his supervision?

A. In the warehouse?

Q. How many have you got in the warehouse?

A. I don't know; possibly twelve or fifteen.

Q. And he will take such of those twelve or fifteen as you need for the particular job you have at hand?

A. Whenever he has to do it.

Mr. Kurz:

That is all.

Cross Examination.

By Mr. Shelton:

Q. Mr. Cavert, will you tell the Court whether or not you are the son-in-law of Mr. C. G. McGehee? Are you.

The Court:

That is nothing to be ashamed of if you are.

A. I am, your Honor, but I don't know how that is material in this case.

Mr. Shelton:

Now, you may leave the materiality to counsel and the Court.

Q. You testified, I believe, that you have been employed in the warehouse since September of last year?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. Your particular observation of what is done by Mr. Fields has been limited to the period since last September?

A. That is correct.

Q. What part of your time during that period, in other words, since last September, have you spent where you could see what Mr. Fields was doing?

A. Practically the entire part over there. We work together.

Q. What are your duties there, Mr. Cavert?

A. Well, primarily more or less as a student to learn the business.

Q. Have you from time to time told those colored employees what to do there?

A. I have.

Q. State whether or not Mr. Adams also tells those colored employees what to do?

A. He does.

Q. Is there any of the Mr. McGehees who is regularly in that department?

A. One of them is there part of the time.

Q. Which Mr. McGehee is that?

A. C. C. McGehee.

Q. Does he also tell the colored employees what to do?

A. Yes.

Q. Mr. Cavert, when Mr. Fields is going to take one of those crews that you referred to, crews of colored employees, does Mr. Adams or Mr. C. C. McGehee ever tell him which employees to take or how many?

A. I suppose at times there are times when he does if a lot of colored employees was busy at the time there might not be enough to go around, so to speak.

Q. How many shipping clerks are there, Mr. Cavert, who use this crew of from twelve to fifteen colored employees? Are there others besides Mr. Fields?

A. Not for the country shipments.

Q. Are there others for any type shipments?

A. When we get up city orders each day we use the same colored employees.

Q. Who do you mean by "we"?

A. The ones who work in the warehouse.

Q. Who are they?

A. The ones you have named.

Q. You and Mr. Adams and Mr. C. C. McGehee?

A. That is correct.

Q. Mr. Cavert, does Mr. Passmore, the fine paper shipping clerk, also use some of those same colored employees when he prepares shipments?

A. At times, if he did not have enough to get by with he would use some of those; yes.

Mr. Shelton:
Your witness.

Mr. Kurz:
No questions.

The Court:
Come down.

344 Thereupon CHARLES A. ATKINS was called as a witness on behalf of the defendants and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kurz:

Q. Your name?

A. Charles A. Atkins.

Q. Are you employed?

A. Jacksonville Paper Company.

Q. How long have you been employed there?

A. Between twelve and fourteen years.

Q. In what department and capacity are you employed?

A. In the printing paper and fine paper. I have charge of the printing paper.

Q. Is that the department the fine paper department which handles newsprint?

A. Yes.

Q. Are you familiar with the various uses of newsprint that is sold by your department?

A. I know some of the uses.

Q. Will you tell the Court whether the newsprint sold by the Jacksonville Paper Company is used for purposes other than the printing of newspapers?

A. You mean to tell them what the—

Q. Different uses if there are others than printing of newspapers?

A. It is used to print handbills. Bakers use it for pan liners. Schools use it for children to practice on.

Q. What do job printers use it for?

A. Printing circulars and handbills. Lithographers use it to dry their plates.

Job printers use it for packing paper under the press.

I believe that is all, that I know right now to recall.

Q. Are you familiar with the use of weekly newspaper plants that operate flat on this roll whether or not most of them also operate a job printing department?

A. Most weekly newspapers do; yes.

Mr. Kurz:

That is all.

Cross Examination.

By Mr. Downing:

Q. Mr. Atkins, for what purpose do newspaper publishing companies use rolled newsprint?

A. Sir?

Q. For what purpose do newspaper publishing companies use rolls newsprint or newsprint rolls?

A. For printing the paper, newspaper.

Mr. Downing:

That is all.

Mr. Kurz:
That is all.

The Court:
Come down.

346 Thereupon, CLYDE C. McGEHEE was called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kurz:

Q. You are Mr. Clyde C. McGehee?

A. Yes.

Q. You are Mr. Clyde C. McGehee?

A. Yes.

Q. You are Mr. C. C. McGehee's brother?

A. Yes.

Q. You are employed in what capacity by Jacksonville Paper Company?

A. I am vice president and general manager of the shipping department.

Q. Shipping department in Jacksonville?

A. Yes.

Q. Is Mr. Fields one of the men in the shipping department in Jacksonville?

A. Yes.

Q. What is his capacity and duties?

A. Well he assembles orders and checks out merchandise.

Q. In that work does he do the actual assembling of the merchandise and loading it?

A. No. He has boys to do the loading.

Q. Who directs those boys as to what to do?

A. He has charge of them when they are with him.

Q. How many of them does he usually use in the performance of his duties?

A. Well, sometimes one and sometimes two or three.

Q. How many are employed in the warehouse generally?

A. About, I guess, twelve or fifteen, all told.

Q. When you say "boys" I asume you mean negro employees.

A. Yes.

Q. Does he select those that he needs for doing the particular job at hand from time to time?

A. Yes. He takes one of them to help to load or whatever comes up.

Q. And does he tell that man then what to do and how to go about the job?

A. Yes.

Q. What generally are Mr. Fields' duties in this work?

A. He is assistant foreman of the warehouse, getting up and shipping the merchandise.

Q. Does he check the goods?

A. Yes.

Q. Check the invoices as they come out and so forth?

A. Yes.

Mr. Kurz:

That is all.

Mr. Shelton:

No questions.

348 Thereupon, A. S. REINOEHL was recalled, as a witness on behalf of the defendants, and testified as follows:

Direct Examination.

By Mr. Kurz:

Q. Mr. Reinoehl, you heard the testimony yesterday of some of the witnesses with reference to the failure to punch the time clock at Southern Industries?

A. Yes.

Q. Are those records, the time clock records, in your charge at Southern Industries?

A. Yes.

Q. Are those records, the time clock records, in your charge and custody?

A. Yes, I have supervision of them. They are handled directly by Mr. Stanton.

Q. But you are in charge of the auditing department?

A. Yes.

Q. Since the testimony yesterday have you checked the actual time clock records to see how many occasions there are on which it is indicated that employees failed either to check in or out?

A. Yes.

Q. What period of time did your inquiry cover?

A. I checked the period from June 1, 1945 to May 29, 1946.

Q. That is the fiscal year?

A. Yes; twelve months period.

Q. On how many occasions during that length of time did you find that the records indicated a failure either to check in or check out?

A. I believe there were ten. I have the list here.

The Court:

Get your list.

(Witness referred to paper.)

A. (Continued) . There were eleven.

Q. Is that list that you have a memorandum taken from the original records showing all the omissions to check in or out during that period of time.

A. Yes.

Mr. Kurz:.

We offer that list in evidence, if the Court please.

Mr. Downing:

May I see what information is on the list.

Mr. Kurz:

Yes.

Mr. Downing:

No objection.

The Court:

Let it be received in evidence.

(The paper was admitted in evidence and marked Defendants' Exhibit C.)

Q. How many employees use that time clock system?

A. That varies from 110 up to 140.

By the Court:

Q. Per day?

A. Regular employees.

Q. Regular employees each day they work?

A. Yes.

By Mr. Kurz:

Q. Of all these employees for the entire years period the records only indicate those eleven instanees where they did not check both in and out?

A. That is all.

Q. Mr. Reinoehl, do you have with you a sample of the time record sheets that were maintained by the company showing the time actually worked by the employees?

A. What records?

Q. The time sheets, daily time sheets?

A. No, sir, I do not.

Q. Who keeps those?

A. They are kept in our department under my supervision.

Q. What information do those time sheets show?

A. You are referring to the Jacksonville Paper Company, now?

Q. Jacksonville Paper Company.

A. Yes; they show the time the employee signs in to work, the time checked out for lunch, the time returned after lunch, and the time he quit work in the evening. Also, in case any employees worked after hours, that time is also recorded.

Q. I hand you herewith a form for the Tallahassee branch, dated 5-13-46, and ask you whether that is the form of the sheet used by the Jacksonville Paper Company?

A. It is.

Q. Is that used at Jacksonville and all the branches?

A. Jacksonville and all branches, yes.

Mr. Kurz:

We offer that in evidence as a sample of the time records kept by the company.

Mr. Downing:

We have no objection. We do point out that they are already in evidence in the deposition.

The Court:

Let him file it.

(The paper was admitted in evidence and marked Defendants' Exhibit D.)

Q. Mr. Reinoehl, you supplied on yesterday at Mr. Downing's request some files of personnel records of individual employees. With reference to the white sheet that was referred to showing the basis on which the employment is made will you look through those files and see if you find any of those white sheets that were signed by employees showing the basis of their employment?

A. Yes.

Q. These are the files?

A. Yes.

Mr. Kurz:

If your Honor please, Mr. Downing just tells me they took certain samples out of these files. I want to show those to the witness also and state that Mr. Downing asks that you keep those separate.

The Witness:

Do you want interstate and intrastate files all checked for that?

Mr. Kurz:

Yes.

Q. By intrastate files you mean branches that we referred to as intrastate branches?

A. Yes.

The Court:

I understand that the list, the classification list is significant since the Supreme Court decision.

Mr. Kurz:

But it is still a designation, your Honor.

The Witness:

We have one here signed by Margaret Oetgen, in the Savannah branch;

There is one signed by Frances Fullington in Jacksonville.

We have one signed by Nelle B. Cooks, from the Miami branch.

We have one signed by George Toler of the Pensacola branch.

We have one signed by Florence Redick of the Savannah branch.

This file has a notation to the effect that you already hold on—this is Carrie Anderson. This is the one signed by Carrie Anderson of the Tallahassee branch.

We have one signed by Helen Donovan, of the Mobile branch.

That seems to be all.

Q. What are the instructions with reference to securing slips of this kind from new employees when employment is offered to them?

A. The instructions are that the form has to be filled out and signed by all new employees on an hourly basis.

Q. Is that generally done?

A. Generally; yes.

Q. All of these slips, these employment slips, are on this form, are they not?

A. Yes.

Mr. Kurz:

We offer the forms that the witness has identified.

The Court:

They are all the same?

Mr. Kurz:

All the same, your Honor, except all of them are not filled in completely. Frances Fullington has hours and

no rate. The rest of them show both hours and rate. I introduce Frances Fullington.

The Court:

If there is no objection, let them all go in.

Mr. Kurz:

We offer, then, the slips on Nelle B. Cooke and Frances Fullington as illustrative.

Mr. Downing:

No objection.

The Court:

Let them be received in evidence.

(The papers were admitted in evidence and marked Defendants' Exhibit E.)

Q. Mr. Reinoehl, yesterday Mr. Downing offered certain accumulated hour records as typical which apparently had some qualifications. Have you secured some records that you regard as illustrative of the type of accumulated hour records kept by the company?

A. Yes, I have.

Q. Do you have those with you?

A. Yes.

Q. What are they?

A. I have one on Miss G. A. Rice and one on C. C. Frazer.

Mr. Kurz:

We offer those as typical records on behalf of the defendants.

Mr. Downing:

Your Honor, I would like an opportunity—I may have no objection. I would like to have opportunity to examine Reinoehl about it. Perhaps I could agree they are typical or perhaps I may agree they are not typical. I wonder if it would not be regular if I did it on examination later after I have an opportunity to examine them.

The Court:

He can file them now for identification if you would rather postpone your cross examination until that time. Don't forget, Mr. Kurz, to offer them later after Mr. Downing has had an opportunity to cross examine the witness.

Mr. Kurz:

I now file this record for identification.

The Court:

You may file them for identification or offer them in evidence and I can postpone by ruling on their offer in evidence until Mr. Downing has had an opportunity to cross examine the witness and make any objection that he might want to make as to their introduction in evidence.

Q. Mr. Reinoehl, you compared some of the accumulated hour records at the request of Mr. Downing. It has been filed in evidence as Exhibit 5. Do those records also include time out on account of sickness, holidays, and so forth in the accumulated number of hours shown on that?

A. Yes.

Q. Have you had occasion to check some of those records and break them down so as to determine what part of the accumulated hours is counted off by holidays and sick leaves, and similar occasions?

A. I checked two of them.

Q. Which?

A. I checked one on Mrs. Rice, which shows an absence of ten and a half days on illness and three days on account of holidays, which on the average days work without computing the actual time from the time sheets is one hundred and seventeen hours out of a total accumulated hours of three hundred sixty five and one-half.

Q. What about the other one?

A. The other one is Florence Hotchins. She has been absent twenty days on account of sickness. No holidays included in these figures. A total of one hundred seventy-three or approximately one hundred and seventy-three hours out of three hundred ninety-four hours and ten minutes accumulated time.

Q. Do the other accumulated hour records also include time not actually worked by reason of holidays and illness?

A. Yes.

Q. Mr. Reinoehl, in determining the amount of bonus paid to employees, is that based also on the percentage of the overtime that they received during the previous year as well as straight time?

A. Yes. Based on the total earnings. Regular and overtime rate.

Q. Am I correct in saying that the bonus is a certain percentage of the straight time and the same percentage of the overtime paid which would be one and one-half times the straight time?

A. Yes.

Q. Do you recall the testimony with reference to the discharge notice sent to employees in about 1940 and to the re-employment of those employees on an hourly basis?

A. Yes.

Q. Have you had an opportunity to check and see how many of those old employees are still in the service?

A. I haven't checked the exact number but there are very few of the old ones still with us.

Q. On what basis were the new employees employed to replace the old ones?

A. On an hourly rate.

Q. In connection with the employees which you have classified as administrative or executive employees did the company make any effort since 1942 to increase their compensation?

Mr. Downing:

Object to that as immaterial.

The Court:

Read the question.

(The Court Reporter read the last question.)

The Court:

I don't understand the question. I don't understand the word "effort".

(Argument.)

Mr. Downing:

Efforts or desired are immaterial to the issues.

The Court:

Under the law that we are administering in this case minimum wages are prescribed and the question as to whether or not the wages here are below the minimum as fixed by the statute is not the issue that the Court has before it, is it?

Mr. Downing:

It is not a question of payment of minimum in the classification of administrative employees.

(Argument.)

The Court:

I am going to overrule your objection and let the witness answer your question.

The Witness:

Will you read the question again?

(The Court Reporter again read the last question.)

A. Yes.

Q. What was the nature of that effort?

A. Applications through the treasury.

Mr. Downing:

I introduce an objection to all this line of questioning.

The Court:

You have a running objection to it. Go ahead.

A. (Continued) Application was made to the treasury department.

Q. What was the connection of the treasury department on the application?

A. On part of the employees it was approved; on others it was declined.

Q. What about the executive employees and administrative employees.

A. Those are the ones I have in mind, that I referred to there in that application, in that category, with the exception of—

Q. As to some it was declined?

A. Yes.

Q. As to some approved?

A. Yes.

Q. I take it as to those that were approved the increase was put into effect?

A. Yes.

Q. In talking about the accumulated hours and inclusion of sick leave and holidays or the vacations, was that accumulation also added by vacations?

A. That was the instructions. It was supposed to be added.

Q. It was added?

A. I think it was.

Mr. Kurz:

That is all.

Cross Examination.

By Mr. Downing:

Q. On that last point, Mr. Reinoehl, I will begin in reverse order. I show you, for example the record of the accumulated hours on Mildred Beaverst. Do you know the account? For the week ending June 17. I can't tell the year, can you?

A. 1944.

Q. I will ask you if she was out that week on vacation and if in fact, no accumulation of hours was charged against her for the week. Just answer "yes" or "no".

A. She was out and there was no accumulation charged.

Q. Is the same true in her case for the preceding year, the week of June 10?

A. Yes. I might mention that with one point, however, that—

Q. Pardon me. I believe that is the preceding week in the same year. I am sorry. Let me amend my question. As a matter of fact she was out two weeks, the week of June 10 and the week of June 17, and there was no accumulation made for either week?

A. Without checking further in the payroll records we have a different angle on that one. In as much as she had not been in the service for a full year and they don't get vacations on full pay until after a year's employment—

Q. I am asking you as far as you know about the accumulation of hours records?

A. If she was not paid there would be no accumulation of hours.

Q. I see. And is it your impression that this particular employee had not been there long enough to get a vacation with pay?

A. The record, of course, is that she started work in November, 1943.

Q. Mr. Reinoehl, you have here in the Court room the payroll record for the week of that employee's previous two weeks. Will you refer to that and state whether or not she was in fact paid or not paid for those two weeks vacation?

A. You want me to find those payroll records now.

Q. Yes, I was looking at the records this morning. I know that year is here. I don't know about that particular employee.

The Court:

June 17 and June 10, 1944.

Mr. Downing:

Yes.

A. (Witness examined records) She was struck off the payroll for the week June 10; she was not paid for that week.

Q. How about June 17?

A. She was not paid for that week.

Q. Let us take some more instances from the accumulated hours record to see if that rule which is indicated will hold out.

I turn to the account of Catherine Cooper, for example for the two weeks ending February 21, and February 28. I don't know the year. I direct your attention to the fact

that those two weeks are marked "vacation" and that no accumulation was made for those two weeks, and I direct your attention also to the fact that the accumulation of hours at that point is over five hundred. Would she have accumulated that many in less than a year?

A. No, sir. If she had been employed over a year she would have been entitled to one week's vacation.

Q. Let us take another example. By that you mean with pay?

A. Yes.

Q. I direct your attention to the account of L. F. or F. S. Corbett for the week ending September 2nd. I still can't find the year on this.

I direct your attention to the fact that that week is marked "vacation" and that no accumulation was made for hours.

I also direct your attention to the fact that the accumulation at that point is nine hundred hours. Had he accumulated nine hundred hours in less than a year?

A. No, sir.

Q. Would he have been entitled to a week's vacation with pay.

A. He would.

Q. I direct your attention to the account of Miss L. F. Gillespie for the week ending July 1, apparently 1944. That record indicates a week's vacation, that no hours were accumulated to her account, and that she had a total of approximately six hundred accumulated hours. Would she have accumulated that number in less than a year?

A. No, sir.

Q. Would she then have been entitled to a week's vacation with pay?

A. She would.

Q. While we are on the subject of accumulated hours, will you state the basis on which you selected Mr. C. D.

Fraser's account as typical; what considerations you took into account?

A. Only that I knew he was a regular employee, worked regularly and did not lose but very little time on account of illness or for any other reason.

Q. Did he work the usual and normal and regular schedule of fifty hours?

A. Yes.

Q. He was set up for sixty?

A. Yes.

Q. In spite of the fact that he did work regularly and that he worked the regular schedule, is it not a fact that in the space of three years he has built up a debit of 1650 odd hours?

A. Yes.

Q. Will you explain similarly the basis on which you selected the account of Mrs. G. A. Rice as typical.

A. She is a regular employee and loses about the average time from work that ladies ordinarily lose on account of sickness.

Q. That is the point I want to ask you about, Mr. Reinoehl, the sickness point.

She has here an account of three hundred and sixty hours and a half since April 27, 1945. That is just over a year, is it not? Is the one and a half days out for illness typical for that period of time.

A. Well, it is just about. Of course, some of them are out a little bit more than that and others not even that much.

Q. Let us work down to some that are typical, especially female employees?

A. Yes.

Q. You consider, then, that ten days during the year off for sickness of female employees is normal?

A. I would say so.

Q. I agree with you.

A. Yes.

Q. Would it be typical in the case of male employees?

A. That they would be out ten days?

Q. Yes, in a year?

A. No, sir. Some of them are not out even as much as one day.

Q. One thing that struck me as rather odd was that in the case of Mrs. Rice she was out three holidays and it shows Miss Hoskins, she had a figure of accumulation and had no holidays? What is the answer to that?

A. If you will let me refer to that accumulated record. I don't believe you have the original record. There was a break in her service. She came to work the week ending July 14. Due to illness she quit on September 22. There you have one holiday in that month, in September.

Q. Labor Day?

A. Labor Day.

Q. Yes.

A. However, she was out ill. I don't know why she had no credit for the holiday there except she was out ill during the week ending September 8.

Q. That was the week that Labor Day fell in?

A. Yes.

Q. Was she charged with her accumulation of hours that week?

A. Yes.

Q. That week that Labor Day—

A. Yes. Then she left our service in September and did not come back until April of this year and there have been no holidays since that date. There was one holiday that should have been computed in there, Labor Day.

Q. That was charged to her in here as illness?

A. Yes.

The Court:

Have you completed your cross examination on the exhibits offered in evidence?

Mr. Downing:

I have no objection to those going in subject to the qualifications that Mr. Reinoehl has testified to.

The Court:

Let them be received in evidence.

(The papers were admitted in evidence and marked Defendant's Exhibit F.)

A. I think these are all, Mr. Downing, except those that were removed.

By Mr. Downing:

Q. On the holiday subject, what are the usual annual holidays?.

A. New Years Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

Q. How much time do you give them at Christmas?

A. Ordinarily one day, or if Christmas falls near the end of the week quite frequently we give them the other day off intervening between the holiday and Sunday.

Q. And generally all of those holiday hours are automatically added to the accumulated hours record?

A. Yes.

Q. What is your explanation of the variance of policy or practice with reference to charging vacation hours in some cases and not charging them in others?

A. It is not a matter of practice; it is a matter of the type of help that we had to use for the last several years.

Q. Who keeps the accumulated hours record?

A. I expect four or five different people post on it. I haven't personally performed all the calculations on it.

Q. You have not?

A. No, sir.

Q. How many assistants do you have all together?

A. All together, about twelve.

Q. As a matter of fact, you are unable personally to check a good bit of that work?

A. That is right.

Q. What are your instructions, to charge the vacation hours or not charge them?

A. To charge them.

Q. What is your instructions to the branches on that point?

A. I think they have also been instructed on the same basis. Whether or not there has been a letter issued to that effect I can not recall at this time.

By the Court:

Q. As far as the company is concerned it has no different policy?

A. No, sir.

By Mr. Downing:

Q. With reference to your testimony as to the basis on which new employees are hired for each department, do you, yourself, hire employees?

A. In the accounting department.

Q. Are there understandings and agreements made for other departments by persons other than you?

A. Yes.

Q. And is all the hiring in branches done by someone other than yourself?

A. Yes.

Q. Do you have any personal knowledge of the oral understandings in any of those cases?

A. No, sir.

Q. Do you know therefore whether the agreement orally is to pay so much a week.

A. I don't know whether that is the agreement; no, sir.

Q. Do you know that it is not the agreement?

A. No, sir.

Q. Do you have—except for case where you do the hiring yourself your testimony is based on what these papers show?

A. That is right.

Q. Were you here when Mr. Terrell testified yesterday?

A. Yes.

Q. You heard his testimony with reference to the fact that Mr. Atkins hired him to work by the week?

A. Yes.

By the Court:

Q. Would you say that is not the general or is the general practice of the company?

A. It is not the general practice to hire by the week.

Q. Then where you pay in a lump sum a weekly amount and they are not an hourly employee—

A. Those who were not hourly employees would be hired by the week but those who are carried under the wage and hour set up are all set up and employed, they are all set up on the hourly basis.

Q. You have an agreement with employees working for the company that you pay a fixed weekly compensation, don't you?

A. Yes.

Q. How many does that apply to?

A. Well, it would apply to all who are on the accumulated hour record, which of course includes everyone except—we will put it this way: In the interstate branches it includes all except the managers, salesmen, warehousement and truck drivers.

Q. In all the cases where you use the accumulated hour plan insofar as such employees are concerned, those employees are all paid a fixed weekly wage?

A. Yes.

Q. What classification?

A. Warehousemen, truck drivers.

Q. They have no accumulated hour plan effective as far as they are concerned?

A. No, sir.

Q. On all employees, then, where the accumulated hour plan is concerned the Court may in this case assume that those employees were paid on the fixed weekly compensation basis, or to put it in another way, they actually get fixed weekly compensation of a specified amount?

A. Yes, with the adjustment carried through the accumulated hours.

Q. And any overtime that they made, it would be taken care of by the accumulated hour debt against them?

A. Yes.

By Mr. Downing:

Q. In addition to that, those accumulated hours, Mr. Reinoehl it is true isn't it that in the intrastate branches your employees there, with the exception of the hourly paid warehousemen, are on a fixed weekly salary?

A. The payroll is set upon a fixed salary. However, in every instance where the employee worked on an hourly rate did not work the number of hours as paid for, the branch cashier sends us the payroll refund notice which we adjust on the following week. If they go over that schedule, were paid additional— extra labor—

Q. Isn't the arrangement in those intrastate branches with those employees just the same as the arrangement with those in the accumulated hour plan except no record of the hourly debits are kept?

A. No, sir.

Q. Will you explain the difference. You do assume the contrary.

A. I think I just covered that in saying that if they did not work the number of hours for which they were

paid that was adjusted through the following week's payroll; if he worked more hours they were paid additional.

By the Court:

Q. They were actually paid additional compensation?

A. Yes.

Q. Did you also debit them any deductions for failure to work the required number of hours?

A. Where they worked less?

Q. Yes.

A. That is deducted from the payroll. Through the payroll they draw much less.

Q. They actually draw that much less money?

A. Yes.

Q. While we are on that, if it won't interfere with Mr. Downing too much, I would like to ask you another question.

We have a witness here, one witness appeared here who testified that he was employed on the basis of forty dollars a week and this witness—what was his name, Mr. Downing?

A. Mr. Terrell.

Q. And that his contract was that he was to work fifty hours and that he was to get forty dollars a week. The paper that was introduced in evidence in connection with the employment showed him on a sixty hour a week basis instead of the fifty that he testified to was the basis that he worked on. Now, you showed an hourly rate in that paper did you not?

A. Yes.

Q. Then in actually computing, that is, the employee's time, in computing that each week you did not record the hourly rate shown on that paper. He actually worked only fifty hours.

A. He was on the accumulated hour plan.

Q. Did he actually work fifty hours? Did you just actually disregard if in calculating the compensation for the week, you actually disregard the hourly rate shown on that memorandum that you hold in connection with his employment?

A. No, sir. The hourly rate appears on the payroll, the total of sixty hours, together with the hourly rate applying as appearing on that employment notice, what was used in computing his pay.

Q. How did you compute it in giving him the forty dollars when he usually worked fifty hours?

A. The rate is based on the regular time—it is on a sixty hour schedule.

Mr. Downing:

If your Honor please will permit me, I can develop from Mr. Reinoehl that the payrolls are made up by the home office and branches in advance of the time, the record of the hours' work which were made—they are made up on the salary, on the basis of allowable hours, accumulated hours. The contracts always show sixty hours and the accurate number of hours.

The Court:

Mr. Reinoehl does not understand my question because your answers that you gave to it is a mathematical impossibility. If a man had a schedule that would give him forty dollars for sixty hours' work you would not give him the same compensation for fifty hours.

The Witness:

No, sir. He was on a sixty hour schedule.

Mr. Downing:

May I ask a question.

The Court:

You may take over, Mr. Downing.

By Mr. Downing:

Q. Your payroll is always made up on the basis of the contract hours, are they not?

A. Yes.

Q. If any employee is in a department for sixty hours, the payroll always shows he was paid for sixty hours that week, so that he may have worked only his normal schedule of fifty hours or he may have worked some lesser number; is that correct?

A. That is right.

The Court:

I understand it now. In making up the payroll you disregard that.

Q. You do retain, however, the daily time sheets on which the employees punch in and out?

A. Yes.

Q. And those daily time sheets are prepared to show the actual hours worked?

A. Yes.

Q. But those actual hours did not appear on the payroll records at any place?

A. But they do appear on the accumulated hour record.

Q. But not on the payroll record?

A. No.

Q. Let us go back to the point to the intrastate branches because as I say I got a different impression. Let us take the case of the female employees in the branches. They work normally the same schedule of forty eight hours that the home office employees do?

A. In most branches I believe they do.

Q. Let us take one who because of a holiday in the week works only forty hours. Do you pay her her full week's salary?

A. In the case of the legal holidays or illness they are paid their full week's pay.

Q. Suppose she takes off one-half day in the mid-week and she works only forty-four hours? What kind of deduction do you make on her regular weekly salary?

A. You are referring now to the branches?

Q. Intrastate branches.

A. The branch cashier sends or makes a correction on the payroll sheet, deducting, paying her the actual correct amount and he sends a weekly payroll refund voucher and we deduct that from the total payroll the following week and he adjusts the payroll funds on the basis of the difference that he was over on the previous week.

Q. Then your payroll is made up here for your branches in advance of information as to the actual hours worked in the actual week?

A. That is all adjusted the following week.

Q. After the records for the week come in, your payroll records are adjusted for the following week?

A. Yes.

Q. In the meantime the branch manager, who knows that the employee was off that four hours or that half day, and that this particular employee's pay which you have sent him a half day's pay—

A. Yes; that is right.

Q. What deduction is made for the half day's pay?

A. Depending on the rate.

Q. Let us take the case of a lady who works forty-eight hours a week and makes $24.00. Will you figure out for the Court what she would receive for the forty-four hours.

A. Works forty hours?

Q. She is on a schedule of forty-eight hours. She gets $24.00 a week. Figure out for the Court how much you would pay her for a forty-four hour week?

A. Wouldn't it simplify it if I get her voucher?

Q. Take a forty-four hours week and tell us how you figure it?

A. We take the hourly rate, figure it at forty hours. I assume she worked over forty hours. I figure the deduction I think, the difference between that and the amount we sent for the week's pay—we withhold.

Mr. Downing:

I would like him to make an actual calculation. I am not sure I follow him.

Q. Take the case of a forty-eight hour a week employee paid $24.00 a week, and figure out just how much she gets for the forty-four hours.

A. $21.16.

Q. What did you figure the hourly rate?

A. You didn't give me the hourly rate. I had to determine what the hourly rate was. Had I had the payroll rate, sheet I could tell you what it is.

Q. Tell us what you got and how you got it?

A. Assuming that the payroll is set up for twenty-four dollars for the forty-eight hour week. Then the same deduction I would have to assume that the rate appears on that payroll would be 46.1 cents.

Q. How; how did you arrive at that? How is it you did not get fifty cents.

A. To get your overtime in—

Q. How did you figure it?

A. You got forty hours straight time, eight hours overtime, which is equivalent to twelve additional hours. You have overtime and straight time, fifty-two hours, which gives you a base of forty-six cents.

Q. You take "X" number of hours above forty and get that in before you figure your rate?

A. That is the only way you could arrive at it.

Q. You might call that an "X formula"—"X" above forty hours plus the time and a half X—by adding to the forty and dividing into the pay; is that right.

Mr. Downing:

What rate did your Honor figure out up there?

Q. With reference to the white forms which are produced here will you get those that were not filed in evidence? They were around here a moment ago. You found five in these folders plus two we did not put in evidence; is that correct?

A. I think that is correct.

Q. Is this the stack of files from which you made the selection?

A. I believe it is, Mr. Downing.

Q. These are the files that you produced here, didn't you, as typically representative personnel files?

A. Yes.

Q. There are thirteen of them, are there not?

A. There should be thirteen.

Q. And you were able to find only seven of these white notices—what do you call them?

A. Acknowledgment of hours.

Q. Acknowledgment of hours?

A. Yes.

Q. One point that you got into yesterday—I am not sure as we left it, the record is satisfactory. You testified that as to employees under the accumulation record, additional compensation was paid them only in cases where there was no accumulation on the account against them, did you not?

A. I believe I did.

Q. I should like to show just how often, how frequently since the accumulated hours had come into existence the company ever had any occasion to pay any extra money. Can you state to the Court with reference to the frequency of that practice?

A. I believe I stated yesterday that shortly after we adopted this plan there were instances but they have been very infrequent since that time.

Q. Except in the case sof some new employee who had not had time to make an accumulation and who perchance worked a long work week there would be no extra payment made then?

A. No.

Q. How long in the case of new employees did the employee perchance work such a week to get extra compensation?

A. We have two down there now who will probably draw some extra compensation this week.

Q. New employees?

A. New here.

Q. When did they go to work?

A. Three or four weeks ago.

By the Court:

Q. Temporary employees?

A. No, sir; regular.

By Mr. Downing:

Q. Give us their names?

A. One is A. K. Katz.

Q. All right.

A. The other is Barber. I don't recall his initials. Working on our annual closing. I don't think—I haven't checked—I don't think we have enough hours to take care of them on this extra work.

Q. You said, I thought there were a couple others?

A. I had only two in mind. That was a mistake.

Q. Are they the records in the accumulated hours?

A. In the spring binder—I am not sure. Mr. Barber is in there. I would not be positive. They started three or four weeks ago.

Q. Is this the end of your fiscal year just ending?

A. Yes.

Q. Is that the occasion for the extra work which is being done?

A. Yes.

Q. Is Mr. Katz in your department?

A. Yes.

Q. Is the work abnormally long hours since the first of June?

A. Yes.

Q. How long?

A. Right now we are working three nights a week, around three and a half hours each night.

Q. The hours record shows he came to work the week of May 4, and the record ends the week of June 1st; is that correct?

A. Yes.

Q. During those four weeks which those records cover he had accumulated thirteen hours, a total of thirteen?

A. Yes.

Q. Do you know how many he has manufactured since the week of June 1st, if any?

A. No, sir, I don't know.

Q. You will notice during the four weeks he accumulated rather regular approximately three hours did he not?

A. Yes.

Q. He was working between fifty-one and fifty-two hours a week?

A. That is right.

Q. When did he begin this extra work that you are talking about?

A. The first of June or the Monday following June 1st.

Q. And how much beyond his regular schedule has he worked since then?

A. I would say his regular schedule is fifty-five hours. What does the record show?

Q. I don't mean the contract hours. I mean the schedule hours?

A. He is working—of course his contract hours and schedule hours are the same.

Q. You and I may be quibbling on terminology. What is the least hours that he works if he works normally?

A. Fifty hours.

Q. That is a voluntary schedule, not ordinary times?

A. That is the hours he normally works.

Q. That is right?

A. Yes.

Q. Yes.

A. And he is working right now from nine to twelve hours a week over that.

Q. Since the first of June instead of being a debit on this account there will be a credit because of the end of the fiscal year?

A. For which he will be paid.

Mr. Downing:

We ask that the Katz account be marked for identification.

The Witness:

I will need that sheet in order to figure his overtime.

Mr. Downing:

Withdraw the offer. I think it is clear enough from the examination what the accounts showed.

The Court:

We will take our recess now until 2:00 o'clock.

(Thereupon, at 12:30 o'clock P. M., June 19, 1946, the Court took a recess until 2:00 o'clock P. M. the same day.)

June 19, 1946, 2:00 o'clock P. M.

Afternoon Session.

Mr. Kurz:

If the Court please, Mr. Downing has agreed that we may put another witness on the stand before we conclude with Mr. Reinoehl.

The Court:

All right.

382 Thereupon, LAWRENCE L. PARISEY was called as a witness on behalf of the defendants and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kurz:

Q. Please state your name?

A. Lawrence L. Parisey.

Q. What is your occupation?

A. Superintendent of the bag plant, Southern Industries Company.

Q. Mr. Parisey, will you please state whether or not in connection with that operation there have been occasions when some of the men came to work before the hour for commencing operations?

A. Nothing operates before eight o'clock in the morning.

Q. Have there been occasions when some of the operators would come in a little before that time?

A. If they have, it has been on their own.

Mr. Shelton:

I object to that statement. It is irrelevant that it is on their own. If they worked, it is hours worked, done under the Act.

The Court:

Overrule the objection and the answer will stand.

Q. What do you mean, "it was on their own"?

A. There is no possibility to start before eight o'clock.

By the Court:

Q. Do you have any rule requiring any of these people to come in to get the machines ready for the other people working, ahead of time?

A. Your Honor, only one man.

Q. Only one man?

A. Yes.

Q. Does his time begin before eight o'clock?

A. For several years. It goes back. I have a man come in at seven on Monday and 7:30 on Tuesday, Wednesday, and Thursday and Friday, to do that work.

Q. That is the beginning of his time?

A. Yes.

Q. The question that the Court is interested in is, does the company have any rule that requires any of those employees to start their work before the schedule hours?

A. No, your Honor.

Q. You don't?

A. No.

Q. Any work that is done that might be done before schedule hours is strictly a voluntary act of the employee?

A. They are not supposed to. It is against the rules.

The Court:

Go ahead.

By Mr. Kurz:

Q. Have some of the employees come to work before eight o'clock in the morning?

A. I personally have seen a couple and I told them.

Q. How long before eight o'clock would they show up?

A. I would not say exactly but it might be just a matter of two or three or four minutes.

Mr. Kurz:

That is all.

Cross Examination.

By Mr. Shelton:

Q. Mr. Parisey, is the present starting time for the machines at Southern Industries Company eight o'clock?

A. That is right.

Q. How long has that been true?

A. The schedule that we now operate goes back years. I would not state exactly.

Q. Several years?

A. I would say.

Q. And now, in response to a question by the Court I believe you said it was the job of one man to come in early at Southern Industries, did you not?

A. Yes.

Q. Who was that man?

A. At present?

Q. Yes.

A. Richard Courtney.

Q. Is it your testimony that he is the only employee who regularly starts to work before eight o'clock?

A. Yes.

Q. State whether you have an employee in the bag department whose name is George Goggins?

A. Yes.

Q. What is his job?

A. Janitor.

Q. Do you know at what time in the morning George Goggins starts to work?

A. At eight o'clock.

Q. Does he ever start to work before eight o'clock?

A. I don't know.

Q. I understood you to testify just a little bit earlier that nobody started before eight o'clock except Courtney?

A. That is right.

Q. Then when you say that nobody starts early except Courtney you are saying that Goggins does not start before eight are you not?

The Court:

That is strictly argumentative. You are mixing oranges and apples in the question.

Q. Do you know or do you not know what time Goggins starts?

A. Eight o'clock.

Q. Does he ever start before eight o'clock?

A. No.

Q. When does Courtney punch in?

A. Courtney punches in at seven o'clock on Monday and 7:30 on the other four days of the week, as I stated before.

Q. What about Saturday?

A. Saturday; that is a clean-up day. There is no regular hours but they usually start at eight o'clock.

Q. Is Saturday clean-up day on the machines?

A. Yes.

Q. If I understand you right—I want to be sure—I understand Courtney punches in at seven o'clock on Monday?

A. Yes.

Q. 7:30 from Tuesday through Friday?
A. Yes.
Q. Is that correct?
A. Yes.
Q. Is the time for punching in on Saturday morning irregular?
A. It is not irregular. Should begin at eight o'clock but there are times when they wish to get away early, so I let them go a little early.
Q. Is that Richard Courtney that you are speaking about?
A. Yes.
Q. Now, how long has that approximate schedule been in effect as to Courtney?
A. He has recently taken those duties over; very recently.
Q. How long has it been as well as you can remember? How long has he been doing that?
A. I do not remember exactly; just a matter of weeks.
Q. More or less than a month?
A. Approximately.
Q. I beg your pardon?
A. Approximately; I am not sure.
Q. Approximately one month?
A. Yes; about.
Q. Before Courtney, who?
A. Yes; about.
Q. Before Courtney, who?
A. Roy Rhoden.
Q. How long did he have the job?
A. I don't remember.
Q. Months or years?
A. A matter of months.
Q. As well as you can remember was Rhoden doing that job last November?
A. I don't remember the date of his employment.

Q. Has he been doing that job ever since he started to work for the company except recently when Courtney took it over?

A. No.

Q. Did he do some other job in the beginning—Rhoden?

A. Yes, regular job.

Mr. Kurz:

If your Honor please, that is immaterial.

The Court:

Let him go ahead.

Q. Did a man by the name of Y. Scheldt ever have that job? Who had that job calling for coming in early immediately before Rhoden had it?

A. I don't remember. I can't think of it now.

Q. What was the job of this man Schedlt?

A. He is night superintendent.

Q. Night superintendent?

A. Yes.

Mr. Shelton:

Your witness.

Mr. Kurz:

No questions.

Mr. Shelton:

If the Court please, I was advised just before we started this afternoon by Mr. Reinoehl that the recent payroll records which have been produced on Southern Industries the records have only been produced up until some time in November and we would like to ask, as soon as convenient, for the production of the records for the last seven months.

The Court:
All right, sir. When can we have them here, Mr. Reinoehl?

Mr. Reinoehl:
I can have them brought right down.

The Court:
Will you please, sir.

Mr. Downing:
The relevancy is the records produced show that this man punched in at the same time as the others.

389 Thereupon, A. S.REINOEHL was recalled and testified as follows:

Cross Examination (Continued).

By Mr. Downing:
Q. With reference to the summary you had made up of the omissionss or failure to punch in or out on the time clock, I ask you if your summary extends only to occasions when the entire morning or entire afternoon was punched out?
A. The entire period.
Q. Just answer my question yes or not, then make your explanations, please, sir.
A. What is the question.
Q. Did your summary include any situation except where an entire morning or entire afternoon was punched out?
A. No.
Q. As a matter of fact, if the employee simply punched in late or punched out early, you would have no way of

showing that on the summary. You would not know whether the employee came to work late or punched out early, of your knowledge.

A. Only from the time record.

Q. Suppose instead of punching in at 7:45 a man punched in at 8:45, you would not know whether he had been at work that hour?

A. The records would indicate that he was not.

Q. The record would indicate when he punched in?

A. Yes.

Q. You would have no knowledge other than that as to when he went to work?

A. No, sir.

Q. Therefore you did not include those particular hours or less than half days on this summary?

A. No, sir.

By the Court:

Q. Here is a question that may be material in connection with that practice that you have:

As I understand you, it is that you require all the employees to punch the clock and you impose a penalty for the loss of time where they fail to do it and that you have no plan in effect by which rule an employee actually works who fails to punch the clock and you pay for that time?

A. That is correct.

Q. The question is whether or not that is reasonable rule in compliance with the wage and hour law and I will ask Mr. Reinoehl if in fact you don't pay for the time that is punched out. You only pay for the time that is punched?

A. Yes.

By Mr. Downing:

Q. Will you state, Mr. Reinoehl, if the bonus applies to all employees after they have been in your employ for a period prior to June 1st of any year?

A. Referring to Jacksonville Paper Company.

Q. All employees of the Jacksonville Paper Company.

A. To all employees except the managers and salesmen who are on percentage or on a commission basis.

Q. And all your salesmen are on such basis?

A. Yes.

Q. All other employees are subject to the plan?

A. Yes.

Q. Did you have those white sheets you took out of the personnel files?

A. Yes.

Q. I continue to forget what you call those?

A. Acknowledgment of hours.

Q. Are those plus the green form and called the employment notices the writings which embody the employment agreement?

A. Yes.

Q. Is that the entire agreement?

A. Yes.

Q. Which was signed?

A. That is right.

Q. I will qualify that by asking you if that is the entire written agreement?

A. That is right.

Q. Now, what written notice is there to the employee either at the time of hiring or later as to the accumulation of hours.

A. There is no written notification as to the accumulation of hours.

Q. Does the white notice which you have there include one for Margaret Oetgen?

A. It does.

Q. The date of that is January 19, 1944?

A. Yes.

Q. And that is the date of the employment notice I hand you?

A. Yes.

Q. That is right?

A. That is right.

Q. I direct your attention to certain correspondence relating to Margaret Oetgen taken from her file, some of which appears to be written by you and I will ask you did you receive and write the letters there?

A. Yes.

Mr. Downing:

We ask that this be marked for identification.

The Court:

All right. Let it be so marked.

(The paper was marked Plaintiff's Exhibit 15 for identification.)

Q. I find in some of the personnel files, Mr. Reinoehl, a card such as the one I hand you covering Frances Fullington of the Jacksonville office. What do you call that card?

A. That is a card that was originally used as an earning record card in connection with Social Security records.

Q. How late in the game was it that you continued to use that type of card?

A. I don't believe this card has been used for the last four or five years.

Q. When does Miss Fullington's purport to end?

A. September, 1941.

Q. Is that the date of the last salary change indicated there?

A. Yes.

Q. There appears to be a gash placed at the top which has been punched out?

A. That gash had to be put in there to make this card fit in the cabinet in which the records were filed for

permanent posting, the cords of that type for the employees.

Q. Were cards in the new form substantially different from those?

A. The new form—we have a form used, one on which we post earnings by weeks, and the other card would simply show the annual earnings without reference to the other information because that information is now embodied in the personnel file.

Q. I show you two green employment notices taken from the file of Clarence Stevens and I direct your attention to the fact that the hourly rates and schedule hours in one of them have not been filled in. Can you explain why that was not done?

A. At the time these employment notices were made out the Lakeland branch was not being operated by them—or the employees of the Lakeland branch were not being carried on the hourly rate.

Q. How were they being carried?

A. On weekly rate. That is one of the intrastate branches.

Q. Isn't it true that all the employees of the intrastate branches are carried on a weekly rate.

A. Prior to the change over to the hourly set up which is in force now, they were.

Q. When was that?

A. During 1943, I think.

Q. If, as you say, this was prior to the time the hourly ratings were set up how do you explain these rather unusual circumstances of paying the sum of $20.80 a week.

A. I don't recall how that figure was arrived at.

Q. The form two months later appears to have put it in at exactly $20.00 a week, does it not?

A. The form two months prior was twenty—

Q. Substantially the first form was in February shows $20.08.

A. No, sir; that is in July. The form is dated July. It shows employment dated February. You are correct on that.

Q. Doesn't the unusual figure of $20.08 indicate one of those cases where the limitation of arithmetic got in you way and you ended up eight cents over the salary.

A. That is because we weren't required to use that stuff or that method.

Q. Ordinarily doesn't the dollars and cents indicate you have not been able to work it out "even Steven" in an even amount?

Mr. Kurz:

If the Court please, I think counsel assumes a great deal of matter that is not in evidence.

The Court:

I think the witness is able to take care of himself. I will let him answer the question.

A. What—

Mr. Downing:

Read it.

(The Court Reporter read the last question.)

A. That is a case where we used an hourly rate; yes.

Q. Using the Stevens file again, I call your attention to two yellow sheets marked "payroll refund" and will you the purpose of the use of those sheets?

A. This was governed somehow in connection with the payment of the employee's paid time actually worked on which we send the money to the branches covering the schedule as set up. In the event the employee does not work that many hours for which he is paid the branch recalculates the payroll, pays him off what he has com-

ing and he sends one of these notices and the following week we deduct this from the total of his payroll and he replaces that money with the money that is withheld.

Mr. Downing:
We ask that this be marked for identification.

The Court:
Yes.

(The paper was marked Plaintiff's Exhibit 16 for identification.)

Q. As I understand the operation of the payroll system, then, your payroll is from week to week and you find out from the branches the exact sum—
A. It changes each week as the changes are made.
Q. But one week late?
A. Yes; one week late.
Q. Does the bonus system extend to Southern Industries?
A. Yes.
Q. Do all the branch managers of Jacksonville Paper Company receive more money than the cashier?
A. I think they do.

Mr. Downing:
That is all.

Re-Direct Examination.

By Mr. Kurz:
Q. Mr. Reinoehl, in connection with the branch pay rolls is a check made for each particular employee or is a check made for the total amount which is on the payroll and sent to the branch.

A. No; check for the total; except in a few instances where such checks are made for the salesmen, we have mailed those checks direct to the salesmen.

Q. I am referring now to the employees who appear on the regular payroll.

A. One payroll.

Q. What is the practice of the branch then in making payment if you know?

A. They pay according to that schedule as shown by the payroll. If the employee has worked that number of hours. Otherwise, it is recalculated and they are paid less for the amount of hours worked and the balance reported as a refund or if he works—if the employee works more than those hours they are paid additional.

Q. The branch actually pays each employee in cash?

A. Yes.

Q. Makes up an envelope and puts the cash money in the envelope which the employee earned during the particular week?

A. That is right.

Q. On the basis of the exact hours worked?

A. Yes.

Q. Mr. Downing has offered for identification a payroll refund record as Government's Exhibit 16. Is that the form used by the branches to indicate to the general office what adjustments are made on the payroll for hours not worked?

A. Yes.

Q. And that money is taken into consideration in making up the remittances to the branch for the payroll for the succeeding week?

A. That is right.

Mr. Kurz:

We offer that as Defendants' Exhibit to illustrate the method of making the refunds on payrolls.

The Court:
Now, Mr. Downing do you want the other paper attached to it to go in.

Mr. Downing:
I thought he offered it all as one exhibit.

Mr. Kurz:
I just want to offer it as an exhibit.

The Court:
You want it to go in as you exhibit?

Mr. Downing:
I will put it in now.

Mr. Kurz:
I just want to offer this particular form as a defendants' exhibit.

Mr. Downing:
Let him have it.

The Court:
Let it be received in evidence.

(The paper was admitted in evidence and marked Defendants' Exhibit G.)

(By Mr. Kurz):
Q. In connection with the Southern Industries, if the time clock record shows an employee checked in after eight o'clock, for instance, what deduction is made for fractions of a quarter hour from the pay? Suppose an employee checks in at 8:05; is there deduction?
A. Fifteen minutes.

Q. Afifteen minute deduction?

A. Yes.

Q. For every fraction of a quarter hour you make a quater hour deduction?

A. Yes.

Q. Suppose he works a fraction of a quarter hour over what applies then?

A. If it is only a fraction of a quarter hour it would still be on the same basis.

Q. You disregard that?

A. Yes.

Mr. Kruz:

That is all.

Re-Cross Examination.

By Mr. Downing:

Q. If the employee punched the time clock at 7:46 does he lose that fourteen minutes?

A. They don't start to work until eight o'clock.

Q. If he punches at 8:01 does he lose that fourteen minutes?

A. Not if it is only one offense during the week. If it is beyond one offense—

Q. He is allowed one violation?

A. Yes.

Q. Suppose he punches in at 8:05 once during the week?

A. I believe five minutes— that is the limit on that.

Q. He is allowed below five minutes once a week?

A. I think it is five minutes once a week.

Q. Beyond that, it is on him?

A. Yes.

Q. What happens if the employee punches in at 7:44 in the morning?

A. The plant still doesn't start to work until eight o'clock.

Q. I am asking you how the pay works out. I am inquiring how you pay him.

A. Pay him on the basis of the time the machine starts to work.

Q. Eight o'clock?

A. The machine starts to work at eight o'clock except in cases where one of our employees starts earlier, as has been testified, in some cases.

Q. And which are those cases?

A. I believe Mr. Parisey testified only one case.

Q. That is only one case in many of the early time—

A. If he is the only one required to work earlier.

Q. If a man works from eight to five, until five minutes of the regular stopping time, is he paid for a full day?

A. He would be penalized for fifteen minutes but the machines have shut down at five o'clock or whatever the shutting down time is.

Q. Is that the general practice?

A. Yes.

Mr. Downing:

That is all.

Mr. Kurz:

No questions.

Mr. Downing:

I should like to return to the personnel files the papers on Stevens and Fullington.

401 Thereupon, RICHARD A. DOUGHERTY was called as a witness on behalf of the defendants and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Kurz:

Q. State your name?

A. Richard A. Dougherty.

Q. What is your occupaticon?

A. I am manager of the Florida Paper Company.

Q. That is a branch of the Jacksonville Paper Company in Jacksonville?

A. Yes.

Q. Is that the branch at which Mr. Pliny F. White is employed?

A. Yes.

Q. Will you state the duties of Mr. White?

A. Mr. White is cashier and book-keeper and credit manager, and general office duties.

Q. With particular reference to the credits extended to customers, does Mr. White have any duties in regard to that?

A. Oh, yes, he passes on credits.

Q. Do you also pass on credits?

A. Sometimes; yes.

Q. Are you in the office all the time, all during the day?

A. Most of the time. I should say I am away from the office an average of ten hours a week.

Q. Who is in charge of the branch during the time you are absent?

A. Mr. White.

Q. What other employees are in that branch except—I am not referring to salesmen. Are they any warehouse employees?

A. Oh, yes.
Q. White?
A. Yes.
Q. How many?
A. White.
Q. Yes.
A. Shipping clerk and two regular warehouse men and two truck drivers.
Q. Does Mr. White have anything to do with those men in the warehouse?
A. His authority would be over them.
Q. Is there also a stenographer in the office?
A. That is right.
Q. Does Mr. White have any jurisdiction over the stenographer?
A. Yes.
Q. Does he dictate to her?
A. Yes.
Q. Does he instruct her about the various duties?
A. Yes.
Q. Does he also do bookkeeping work?
A. Yes.

Mr. Kurz:
That is all.

Mr. Downing:
No questions.

Thereupon, C. G. McGEHEE was called as a witness on behalf of the defendants and being first duly sworn, testified as follows:

404 Direct Examination.

By Mr. Kurz:

Q. You are Mr. C. G. McGehee?

A. Yes.

Q. You are president of the Jacksonville Paper Company?

A. Yes.

Q. Do you also have any duties in connection with Southern Industries?

A. I am general manager of Southern Industries Company.

Q. How long have you been in the paper business

A. Twenty-seven years.

Q. Are you familiar with all the different phases of it?

A. I think I am.

Q. At the time of the original injunction was granted in this case in June, 1943, will you state whether any instructions were issued to the so-called intrastate branches about keeping records of the time worked by various employees?

A. There was.

Q. What were the instructions?

A. I issued a letter, as I recall, instructing them that for the purpose of uniformity of accounting that we wanted all employees other than those who were classified as executives to be exempt under the wage and hour law, and that employees on an hourly basis that an accurate time be kept of their hours worked.

Q. Did you follow up to see whether those instructions were carried out?

A. I did, through subordinates.

Q. Did you find any occasion when those instructions were not followed?

A. Oh, I think probably there may have been a few infractions due to the frailties of humankind, and some errors crept in.

Q. When you discovered anything of that sort, did you make any effort to correct it?

A. It was corrected immediately.

Q. As far as you know, then, your instructions were that hourly records should be kept of all employees in the intrastate branches?

A. That is correct.

Q. Prior to the time of this injunction order, had such records been kept as to the so-called interstate branches?

A. They had.

Q. There has been testimony both at this hearing and at the various branches about goods ordered for special customers, for instance, sales books, and printed with the customers' names, gummed tape, and other goods that were supplied according to the order of a particular patron. Do you keep in touch with the various types of business done and the volume of sales of the company?

A. Yes. Every letter that comes to the office of Jacksonville Paper Company is placed on my personal desk and I personally peruse it, unless I happen to be out of town.

Q. Can you testify as to the percentage of such special orders as compared with the total volume of business done by the company?

A. I made some tentative investigation. It is less than one-half of one percent.

Q. Does that include, that percentage you have just testified to, include shipments made by Southern Industries Company to the Florida branches?

A. I don't believe it does, Mr. Kurz. I think this less than one-half of one percent was on merchandise mov-

ing interstate to all the branches, including the intrastate branches. I mean including the interstate branches.

Q. Are you familiar with the general handling of your merchandise through the warehouse at the Jacksonville office and at the various branches?

A. I am. I visit the branches regularly.

Q. What does the bulk of the weight of the merchandise you handle—what type of merchandise would constitute bulk?

A. What do you mean?

Q. For instance, wrapping paper or paper bags—or what are the heaviest items that you handle?

A. Regular stock items?

A. [Q.] Yes.

A. Of course, the coarse paper department, the bags, wrapping paper, paper bags and all other items incident to wrapping or packaging of merchandise. Under the printed paper department comes all items used by the printing industry.

Q. In bulk how do the special shipments for a particular customer compare with the bulk of the merchandise you generally carry in stock?

A. You mean the amount as far as cubic—

Q. As to weight?

A. I don't think that would be one-half of one per cent because most of the special orders are just negligible items, of not sufficient volume to carry as a stock item.

Q. Do you have branches at Tampa and Miami carrying a larger volume in proportion of these special items to branches like Lakeland and Orlando and St. Petersburg?

A. Carry them or sell them?

Q. Sell them.

A. Percentage probably about the same in proportion to the volume. Of course, larger branches handle more

of it but they do a lot more business than the smaller ones.

Q. Now, it has been testified in this case about the bonus which is paid to employees of Jacksonville Paper Company. Will you state how that bonus was authorized?

A. That bonus was authorized first, I think, about 1941, at the directors' meeting.

Q. Do you have the minute book with you.

A. I think Mr. Reinoehl has it over there.

Mr. Downing:

I think that is all irrelevant. In fact, the Circuit Court of Appeals held this type of material was irrelevant, the fact that it was authorized by corporate resolution; the Circuit Court held that recently immaterial.

The Court:

I overrule that. You may refer to the minutes and state when it went into effect.

Q. Will you state by reference to the minutes when the present bonus was put into effect?

A. The present bonus?

Q. Yes, that is—look at the minutes and see.

The Court:

The bonus plan, May 31, 1942. I wrote that date down. Mr Reinoehl gave us that date when he was on the stand.

A. That is not the first bonus.

Q. That is the one in effect now?

A. It went into effect—became effective June 1, 1942.

Q That was the beginning of your new fiscal year, was it not?

A. Yes.

Q. Did that have effect for more than one year?
A. No. One year. We issued a letter to that effect.
Q. That was the basis of the—

The Court:
That has been pretty well covered, Mr. Kurz.

Mr. Kurz:
I won't pursue that any further, your Honor.

The Court:
Resolution from year to year. There isn't any dispute on that question so far, so I don't believe it is necessary to further encumber the record with that. On that point, when did your accumulated hours plan become effective?

Mr. Downing:
The record of the previous trial shows that the contracts or the type of contract now in use began on April 29, 1949, and that the accumulation of hours record naturally began on August 1, 1940. That was Mr. Reinoehl's testimony at the original trial, a portion of which I think I introduced.

The Court:
You agree to that, Mr. Kurz?

Mr. Downing:
I believe Mr. Reinoehl testified that there was a change subsequently made. I just checked that.

The Court:
You checked the year—I want to get that date.

Mr. Kurz:
That is correct, your Honor; August, 1940.

The Court:

Go ahead, Mr. Kurz.

(By Mr. Kurz):

Q. With reference to the coat hanger department of Southern Industries, will you state what the employment was of Mr. Mathis in that connection, and who is in charge of that department?

A. That department was closed about two years, Mr. Kurz, because of our inability to get wire and I think some time in the spring of 1945 we were able to get some wire under priority, and I hired Walter Mathis to come back. He had formerly supervised or operated the coat hanger plant and after that closed he went into the ship yard two or three years, I don't recall how long. When he came back I started him on a weekly basis, as I recall, plus so much per case or per thousand hangers. He worked along that way for a while, and then we changed him on the basis of so much per thousand hangers and of course he was employed all the time on the condition that he was to have superintendency of that plant. He was to see that the machinery was kept in operation and that he would engage additional crews and have the supervision over the additional crews, for which he was to be paid so much per thousand on the hangers for all these additional shipments made in addition to what he was paid for those he made during his shift.

Q. His compensation was based purely on the quantity of hangers produced?

A. By the entire operation.

Q. By the entire operation?

A. Yes.

Q. Both the main and the night shift?

A. Yes. At one time we had three shifts in the plant but we have not been able to get enough wire to start three shifts, but we hope to start three shifts.

Q. Does anyone have any jurisdiction over that department other than yourself?

A. Mr. Mathis is under my direction.

Q. I mean you and Mr. Mathis. Mr. Mathis operates it. You, of course, are general manager of the plant?

A. That is correct.

Q. Anyone else at the plant have jurisdiction of Mr. Mathis?

A. We have five different departments. In any department the superintendent is charged with the sole responsibility of operating his department.

Q. Do you remember when the time clock was installed at Southern Industries?

A. I would say four or five years ago. I don't recall exactly.

Q. Was any rule promulgated by Southern Industries with reference to the pay of employees and requiring employees to check in and out on the clock?

A. Yes.

Q. What was that rule?

A. The rule was that we would only pay people who punched the clock. We found that some employees would come in as late as ten o'clock in the morning, and work and claim that they had been on the job, and so we set up the rule that required him to record his time, and I made it plain to them that each man was his own timekeeper. We have two of those clocks. They set over by the wall and we have about two inch steel bars, two of them that are placed in a way that it makes a narrow passageway where they have to go in and out by the clerk, and most of them have to jam sideways to go by the clock. We did that for the purpose of trying as far as possible to see that they punched the clock. In addition to that, I delegated one man who is in charge of the shipping department to stand by the clock where the men go in and out to be sure that they punched the

clock, and that man was standing there that morning as they were coming in in the morning and at noon.

The union had made a very determined effort to tear down our system we set up, a system that is pretty nearly foolproof, and they attacked it as soon as it was set up. They have not been able to do anything with it. They came to me on many occasions and insisted we permit men to go to the superintendent at any time during the day's period and say: "Here I am, I reported at eight o'clock this morning and forgot to punch the clock." That this superintendent would be allowed to go down and unlock the clock and write it on in pencil, this man's alleged time. They had done that for a few weeks and I found it out, and I issued specific instructions that nobody was to be allowed to do that. That is our time sheet and that the employee was his own timekeeper, and we have thrown around him every protection known to humankind to see that he punches that clock because that is one thing that the union can't tamper with.

Mr. Downing:

We object and move to strike this testimony of this sort.

The Witness:

Disregard it.

The Court:

The Court is not trying the case involving the trouble with the union.

By the Court:

Q. You heard the testimony of Mr. Reinoehl in connection with the record of the company being controlled by the time record on the clock?

A. Yes.

Q. Do you concur in what he said that you adopted no plan by which an employee would be paid for a day's work if the employee worked a day but failed to punch the clock?

A. We have no way of knowing—

Q. Answer my question "yes" or "no" and then you can explain it.

A. What was it.

The Court:

Read it.

(The Court reporter read the question.)

A. Well, we don't say to a man working a day if he did not punch the clock—

Q. Answer the question. Assume that he worked.

A. If he did not punch the clock if he worked a month he would not be paid.

Q. I just want to be certain that that is the practice; that your company had no modification of that in effect by which an error that might be made by some person who actually worked, upon proper verification could be corrected and he would be paid for that day's work or part of the day's work, and the fact is that he would not; is that it?

A. If he did not punch the clock he would not.

By Mr. Kurz:

Q. Mr. Reinoehl testified about the effect of the fractional parts or quarter hours. What are your instructions about that particular method of payment, Mr. McGehee? If a man checks in five minutes late what basis is used for determining the time for which he is paid?

A. I think there is a letter out there on the bulletin board to the effect that, if a man is not late more than one minute a week, he is not docked. If he is late more

than one minute a week he is docked a quarter of an hour for the time he is late, provided it is not more than one or two minutes or up to five.

Mr. Kurz:

That is all.

Cross Examination.

By Mr. Downing:

Q. Mr. McGehee, was Mr. Reinoehl correct in saying that he allows him to be late as much as five minutes one time a week?

A. I think that is correct.

Q. With reference to your rule for punching the time clock, is it or not a fact that in the beginning or at the time you adopted the rule there were more omissions than later, after the employees got into the habit?

A. I do not punch the time clock. Probably. I don't recall that.

Q. With reference to this coat hanger department, Mr. Mathis testified about, normally, how many employees in that department?

A. Two.

Q. Is he one of them?

A. Yes.

Q. He runs the machines on the day shift and another man runs the night shift?

A. Yes.

Q. How long has that been true?

A. Since we began operation.

Q. What?

A. They closed down because of the shortage of material.

Q. When was that?

A. Last spring a year ago, I think.

Q. Does Mr. Mathis do anything on the day shift? Does he do on the day shift the same work that the man does on the night shift?

A. No; he operates the machines. If there is anything to do on the machines, and adjusting, or any corrections, or so forth, he does that at night as well.

Q. Does the shift that he works there correspond to the shift in length; to the shift the night man works?

A. It is about the same length of time.

Q. How many machines does each operate?

A. Let us see. Four machines all automatic.

Q. Each man operates four?

A. Each man operates four.

Q. Can you state about how Mr. Mathis' production corresponds to the night man?

A. He usually produces as much or more, unless he breaks down or something.

Q. I am not taking into account breakdowns.

A. I haven't checked.

Q. You don't know whether he produces more or less?

A. I would say about the same.

Q. Now, I gather that there was some uncertainty in your testimony as to when the first bonus was paid. As I understand it there was a bonus before the one which became effective June 1, 1942?

A. I don't whether I can tell you here. I reckon—(witness referred to papers). The first one became effective the first of June, 1941.

Q. That was the first one?

A. Yes; the first I have any record of here. There may have been one before. I haven't checked.

Q. As best you recall, that is the first?

A. Yes.

The Court:

My date of June 1, 1942, was in error?

The Witness:
Judge, it was revised the first of June, 1942. We had one.

The Court:
The present one is June 1, 1942?

The Witness:
Yes.

Q. Since June 1, 1942, the bonus has been declared exactly on the same basis as the first one?
A. That is correct.
Q. Mr. McGehee, you went pretty well around the State with us on this trip taking depositions, didn't you?
A. Yes, I think I did. I went everywhere you went.
Q. Except West Palm Beach?
A. Yes.
Q. How much were you away from the office the week you went over to Tallahassee and Pensacola, with Mr. Shelton?
A. How much was I away from the office?
Q. Yes.
A. I was away from the office taking these depositions practically one day and part of another. I went on another mission while I was over there.
Q. How much were you out altogether that week?
A. I don't know; maybe three days.
Q. Later you took depositions at Tallahassee and Pensacola?
A. Yes.
Q. On two different days?
A. Took Pensacola one night and Tallahassee the next afternoon.
Q. The next week you went up into Georgia, to Savannah?
A. Yes.

Q. How many days were you gone then?
A. One.
Q. Last week, how long were you out with us?
A. I was with you two days and a half, I think.
Q. You left here Tuesday morning, did you not?
A. Yes.
Q. You were gone Tuesday, Wednesday, Thursday and Friday?
A. No; I was not gone Friday.
Q. What time did you get back here Friday?
A. I got back here Thursday night.
Q. Thursday night?
A. Yes.
Q. Who usually looks over the letters when you are out?
A. Mr. M. R. McGehee. I am not out all the time like that. I was following you boys to keep from making our employees liars.

Mr. Downing:
And he does a good job of it, too, Judge.

Q. What do you consider special order items, Mr. McGehee?
A. Well, if a man wanted to buy some garment bags printed, a special order—
Q. What kind?
A. Garment bags.
Q. Anything especially printed with the customers' name?
A. I consider that a special order. Nobody else could use it.
Q. What else do you consider special orders?
A. Anything that would be printed with the customers' name.
Q. Anything else; what specially printed items?

A. I don't know. We might occasionally sell somebody the whole thing in the department, that would justify stocking and that he could order.

Q. You heard testimony that the fine paper department, and coarse paper department, as a result of war time conditions, a good many items normally carried in stock are not carried in stock, and for that reason necessary that goods be ordered special?

A. They did not testify that it was ordered special. They said they would be out of it, and that would not make them special. We had eighteen inch papers, and if it was depleted, it would not make it a special item by any means.

Q. You heard the testimony aside from the sales book items listed in the sales book, there were others which customers sometimes ordered from you. Did you consider those special items?

A. If they were printed here.

Q. If they were printed here?

A. Yes.

By the Court:

Q. What is about the percentage of special orders. Have you made a study to determine the percentage of total business represents goods that are manufactured or produced outside of the State of Florida as compared with the merchandise that you handle as produced entirely within the State?

A. You mean total business or special?

Q. Total business.

A. We made some calculations. Practically all the printing paper that we handle comes from the bounds of the State of Florida, and the wrapping paper, the coarse parer department, some thirty-two percent is furnished by Southern Industries.

Q. The rest of it comes from beyond the state of Florida?

A. Yes.

Q. Ninety percent of your entire amount of merchandise that you job and sell is produced outside of the State?

A. Not that much, because of course wrapping paper, that department does about around seventy-two percent of the total volume.

Q. Seventy-two percent of the total volume?

A. Yes.

Q. I won't take the time to do the arithmetic. Have you done it? What would that make your total volume that represents interstate shipments?

A. You mean the source of merchandise?

Q. Yes.

A. About eighty percent.

By Mr. Downing:

Q. With reference to the item of thirty-two percent, you recall a discussion that we had with Mr. Shelton when we were on this trip last week?

A. Yes.

Q. Do you recall certain discussion with Mr. Shelton on that point as to the percentage by Southern Industries, and do you recall stating to him that it would run twenty-eight to thirty percent?

A. I told him I think in St. Petersburg, that it would be about thirty-two percent.

Q. You told us, the two of us, maybe about thirty-two. Do you recall saying to Mr. Shelton about twenty-eight to thirty?

A. I don't recall about either of you except just idling along.

Mr. Downing:

I won't quibble about the percent.

Q. Now, I take it that Southern Industries supplied mainly the coarse paper items; is that correct?

A. In the fine paper items—where they make second-sheets paper—

Q. That does not include one. It supplies mainly coarse paper?

A. Yes.

Q. Do you recall Mr. Ross's testimony on the stand, in the fine paper department, that Southern Industries supplied only about ten percent?

A. Ten percent of what?

Q. Of the total fine paper supplied, furnished the branches?

A. A computation of that I have not made, but it would not be any more than that.

Mr. Downing:

No further questions.

Re-Direct Examination.

By Mr. Kurz:

I neglected to ask you one thing with reference to the accumulated hour record, Mr. McGehee. That plan was put into effect in 1940?

A. About that time.

Q. It has been testified here that there has been no attempt made when employees leave the Service to collect whatever might be due them on accumulated hours due by them to the company for hours accumulated. Will you state what the position of the company has been on that situation?

A. We did not use any effort to collect anything, Mr. Kurz. Of course, we could have held the last week's salary. If you do, their wives and children would have gone hungry, and I just could not conscientiously do that.

Q. Did you make any effort to obtain information as to the type of plan which might meet the approval of the wage and hour law before that was put into operation?

A. Yes. I discussed it with you, and you told me that the acumulated hour plan had been authorized by the wage and hour department, and if I am not mistaken, we attempted to use the effort in trying to set up an accumulated hour proposition. I think you have some information in your office on that.

Mr. Kurz:

That is all.

Re-Cross Examination.

By Mr. Downing:

Q. Mr. McGehee, you recall, don't you, that, in the original trial we were attacking that plan?

A. Attacking what?

Q. The accumulated hours plan.

A. If you did not, it was not your fault. You were attacking everything else.

Q. Weren't we attacking that? Didn't we offer evidence on that at all, until Judge Waller decided he was not going to hear any more on that point?

A. I don't know about that, Mr. Downing.

Mr. Downing:

That is all

Mr. Kurz:

Your Honor, there were certain figures introduced yesterday which Mr. Carter obtained. I haven't yet had an opportunity to check them. Also, we want to put into the record the statement of the salaries paid to the so-called executive and administrative employees in ques-

tion, for the convenience of the Court, for the last several years so that they may be readily available. I think in the depositions it probably appears at the various points.

I believe, with that exception, that we have no further testimony at this time.

The Court:

How long will it take you to prepare that information?

Mr. Kurz:

I asked Mr. Reinoehl to go into that last night, but he was not able to complete it, but it could be completed by tomorrow morning, unless there is some question as to the accuracy, it would take very little time to produce it.

The Court:

I would like to get that part of the case in before we close. If you could do it by tomorrow morning, I will be glad to have you do it.

Mr. Kurz

Yes, we can.

Mr. Downing:

We will probably have a little rebuttal that we can organize before tomorrow morning.

Before Mr. Kurz rests now, I do wish to recall Mr. Reinoehl for two or three questions on further cross examination.

The Court:

You may call Mr. Reinoehl because he won't rest until he puts those figures in, tomorrow.

Thereupon, A. S. REINOEHL was recalled and testified as follows:

424 Further Cross Examination.

By Mr. Downing:

Q. This is with reference to the interrogation about the accumulated hours plan, Mr Reinoehl, and to clear up one point that has not been gone into?

A. Yes.

Q. Your original testimony shows that the contract which was presently made was begun about April 29, 1940, and that on August 1, 1940, you began your accumulation of hours. Now, at the time the new contracts were taken, I believe your testimony was that they all signed notices or other employment forms indicating the employment on hourly rates; is that right?

A. I think so.

Q. And those forms also state how many hours they were purportedly hired for?

A. Yes.

Q. On August 1, 1940, and when you began your accumulation of hours, what notice did you issue to the employees then?

A. I don't recall.

Q. Was there any?

A. I don't recall whether there were or not.

Mr. Downing:

That is all.

Mr. Kurz:

That is all.

The Court:

Come down. Court will be in recess until ten o'clock tomorrow morning.

(Thereupon at three twenty-five o'clock June 19, 1945, the Court took a recess until 10:00 the next day.)

June 20, 1946, 10:00 o'clock A. M.

Proceedings convened pursuant to recess.

Mr. Kurz:

I want to recall Mr. McGehee.

Thereupon, C. G. McGEHEE, a witness on behalf of the defendants was recalled and testified as follows:

426 Further Re-Direct Examination.

By Mr. Kurz:

Q. You testified yesterday with reference to the time required to handle special orders in the various branches. Have you made any check of the records since that time to be able to testify a little more accurately as to those percentages?

A. We had Orlando, Lakeland, Tampa and St. Petersburg make a computation based on the number of cars moving interstate, shipments made to any interstate consumer for a period of six months, and we find we have not required the main plant in unloading and placing these interstate shipments, carloads and less carloads—

Mr. Downing:

I object to this line of testimony on the ground that it is not the best evidence. It is hearsay. We have testimony taken at all the branches of the amount of time taken in unloading shipments, interstate shipments. Mr. McGehee is manager of the Jacksonville—

The Court:

You have already taken testimony in these respective places touching on that question?

Mr. Downing:

It is in the depositions how much time they spent in loading and unloading interstate shipments and so forth.

The Court:

Is he merely repeating the testimony that is in the depositions?

Mr Kurz:

No, Your Honor. The depositions do not expressly cover that point. There was testimony at all branches about percentages and so forth.

The Court:

I understand your question, Mr. Kurz, is, you are leading up to, what you are leading up to is to have this witness testify as to the percentage of business which was handled by the branches representing special orders.

Mr. Kurz:

Interstate special orders and interstate special shipments.

The Court:

Interstate special orders and interstate special shipments?

Mr. Kurz:

Yes.

The Court:

The testimony that has already been submitted here and given by other employees of the defendant paper

company is to the effect that due to the war there have been very few special orders, very little special order business handled, and therefore, percentages as effective today because of the war restrictions would not be worth very much to the Court, would it, except that these conditions have existed since June, 1943, practically.

The Court:

All during the war the war is now at an end, and unless your figures were for a period prior to the war, during the time when business was normal, I do not think it is worth very much to the Court, because the Court is obliged to take notice of the fact that war restrictions had an effect on that business as well as every other.

Mr. Kurz:

Yes.

The Court:

So, I hold that those percentages arrived at at this time, as a result of conditions growing out of the war, would not be of any value to the Court in passing upon this question.

Mr. Kurz:

Yes.

The Court:

We know that there is some special order business handled by that house. There was some testimony to that efect. I am not interested in that.

Mr. Kurz:

Yes.

Mr. Downing:

The special order business, I think you will agree, simply in percentage, has not suffered because of the war. The tendency has been normally to increase it because the branches are not able to stock many of the items which they were enabled to stock. It was slight in the original and it is the same now in percentage, but the evidence does show many special orders in proportion, like at the time of the original trial.

I object to the testimony as to the time spent in loading and unloading.

(By Mr. Kurz):

Q. Mr. McGehee, you testified yesterday about the normal rule that Southern Industries Company adopted about the time clock, and basing the pay strictly on the record shown by the time clock?

A. Yes.

Q. Will you state, for the benefit of the Court, the circumstances which brought about the adoption of that rule?

Mr. Downing:

Objected to as merely repetition, irrelevant and immaterial. Read me the question, Mr. Stenogapher.

(The Court reporter read the last question.)

The Court:

He did that yesterday. I have a very completed picture of that and what the testimony with reference to that is. That is a normal condition that the Court recognizes in many businesses of the same character.

Mr. Kurz:

Yes.

The Court:
Step down.

Mr. Kurz:
That is all, then your Honor.

Mr. Downing:
Your Honor, there are one or two points on which I wish to recall Mr. McGehee, as a matter of fact, on further cross examination, of yesterday's, not with reference to these particular matters.

The Court:
Why didn't you do so when he was on the stand, Mr. Downing? Come back, Mr. McGehee.

Thereupon, C. G. McGEHEE, a witness for the defendants was Recalled, and testified as follows:

430 Further Cross Examination.

By Mr. Downing:
Q. Mr. McGehee, there was some testimony yesterday that a man named E. C. Smith and a man named Higgonbotham worked on piece work in the department with Mr. Walter O. Mathis. With reference to Mr. E. C. Smith, I want to ask you what Mr. Smith's job has been, since he was taken off of piece work and put on a salary of $42.50?
A. Night superintendent of the envelope plant.
Q. How many employees in that department?
A. I think Mr. Clehm testified yesterday twelve or fourteen.
Q. How many on the night shift?
A. About half as many as the day; six or seven, or something like that, at the machines.

Q. Does he tell the men to operate any—

A. Who?

Q. Mr. Smith.

A. Just performs the same duties as Higgonbothem does during the day.

Q. With reference to Higginbothem, I want to ask you about the week of November 29, 1944, when it is shown on the payroll paid at the rate of five dollars a day. Did you make the arrangement with him for that employment?

A. I think it is customary when we hire a man to try to teach him to operate the machines, and we pay him so much a day as a student wage until he learns to operate, usually about one or two weeks. We have done that with several of them. You see, during that period, they did not operate a second shift. They worked with the man operating during the day to learn about the machines?

Q. He does not operate the machines?

A. No. He is just there as a student observing the machines, trying to learn how to operate it while the other man is operating it.

Q. What does he do?

A. Nothing but stand around and watch to see how the machine is operated.

Q. Nothing but watch?

A. That is all.

Q. Mr. E. G. Hall, I believe, is the manager of the coarse paper department?

A. Yes, in charge of the department and salesmen.

Q. What is his salary now?

A. I don't know.

The Court:

They have a record of it here if you want it.

Mr. Downing:
Yes.

The Court:
I think that would be the best evidence.

Q. Do you know Mr. Dougherty's salary manager of the Florida Paper Company?
A. I don't remember.

Mr. Downing:
I want to develop the salary of E. C. Hall, and his bonus and salary, and the salary exemptions and bonus of Mr. Dougherty, manager of the Florida Paper Company, but I think, your Honor, that neither of these men are included in those issues, in the pleadings as being misclassified executives. I have another object in mind. Mr. McGehee testified he made no attempt to claim the amounts due for accumulated hours because it would take bread from the mouths of the families and so forth. I am sure Mr. Hall and Mr. Dougherty are getting sufficient money that there would be no likelihood of keeping food from the mouths of their families to any reasonable extent. Both of them are on the accumulated hours list with a balance against them, they said.

The Court:
They are not classified among the employees involved in this suit.

Mr. Downing:
The evidence for the purpose of pointing out the artificiality of the accumulated hours record.

The Court:
That is one question I would not be interested in at this time.

Mr. Downing:
I am interested in making the offer.

The Court:
I hold that it is not material.

Mr. Downing:
That is all.

Mr. Kurz:
If your Honor please, I think the Court understood the questions asked Mr. McGehee in regard to the volume handled pertaining not only to special order, but to all interstate shipments at branches.

The Court:
You mean the ones you are asking?

Mr. Kurz:
With reference to the percentages.

The Court:
We had testimony with reference to percentages of interstate shipment, have we not?

Mr. Kurz:
Quite a bit.

The Court:
Quite a bit. You are familiar with what I have said in the Overstreet case that has been confirmed by the Supreme Court of the United States. I guess it is pretty good law.

Mr. Kurz:
That is all.

The Court:
Step down.

Thereupon, A. S. REINOEHL was Recalled as a witness on behalf of the defendants and testified as follow:

434 Direct Examination.

By Mr. Kurz:
Q. I asked you yesterday for the convenience of the Court to obtain figures as to the compensation paid to these employees who were classified as administrative or executive employees, and I will ask you please to state into the record what amounts were paid, or perhaps it would be more convenient—are those the figures that you worked up?
A. Yes, they are.

Mr. Kurz:
We offer this in evidence.

Mr. Downing:
We object, your Honor. It does not cover all of them.

Mr. Kurz:
Which ones doesn't it cover?

Mr. Downing:
Margaret Oetgen, Roy Butts.

(Argument.)

Mr. Kurz:
We are offering this. If you want any additional ones—

The Court:

Your statement, Mr. Kurz, yesterday, was that you would offer them all; if there are any additional ones that you have, you will have to supply them. Go ahead and file these.

Mr. Shelton:

May I ask Mr. Kurz whether he included those added by amendment, the six: Boykin, Gilchrist, Davis, Owenby, Sanders, and Cox.

The Witness:

I will be glad to get the information on the entire list.

The Court:

You furnish the entire list. Let us have that complete list.

Mr. Downing:

Including those added by amendment.

The Court:

They were to show the Court in so far as all of them are concerned, a few questions, and the Court would like them to do it also.

Mr. Kurz:

I did ask Mr. Reinoehl to get up all of them, but there has been some confusion.

The Court:

Yes; yes, asked him to get them all. If the list is not complete, he should furnish the rest of them, and he will furnish the information. Let the record show that they may be filed as a part of this record when you get it up, even if you are not able to get it before the Court leaves today.

(By Mr. Kurz):

Q. Mr. Reinochl, did the company keep a record of the hours worked by Mr. Terrell?

A. Yes.

Q. Did Mr. Terrell personally sign in and out on the time sheet?

A. Yes.

Q. Do you have the time sheet for any period after the first period of his employment?

A. I do. I did not have the employment records. I believe they are in the Court. I did not have the exact starting date, so I checked back into the time record, and tried to get the time sheets that he signed from October 19, 1942, to November 7, 1942. Now, I believe that is approximately the starting period.

Q. Those time sheets are on the same form that has heretofore been filed in evidence?

A. Yes.

Q. And which shows the exact hours that he worked during that period of time?

A. Yes.

Mr. Kurz:

That is all.

Mr. Downing:

There is no dispute of Mr. Terrell's hours; in fact, there is a record composing the accumulated hours record which we do not deny.

Mr. Kurz:

The purpose is to show that he must have known from that that he was on the hourly basis. Otherwise, there would be no reason for his signing in and out.

Mr. Shelton:

That does not follow, because salaried employees get overtime too. If you are not exempt.

The Court:

There is a dispute as to which are salaried and others.

(Legal argument.)

Cross Examination.

By Mr. Downing:

Q. Mr. Reinoehl, is it or not a fact that with reference to piece workers in the department of Southern Industries under Mr. Mathis that they were paid a straight time piece rate without overtime pay?

A. They were paid straight time piece work; yes.

Mr. Downing:

Your Honor, I have made an examination of the payroll records here in Court on the two employees and I would like to make a summary of what my examination revealed rather than put the whole records in evidence. With reference to the period of time covered, I think it would be a speedy way to get the information before the Court, and Mr. Reinoehl and Mr. McGehee could check

The Court:

The defense is on now. Could you hold that until you get to the rebuttal?

Mr. Downing:

I thought it would give Mr. Reinoehl a chance to check.

The Court:

You can give it to Mr. Reinoehl as soon as he comes off the stand and have him check. You gentlemen can stipulate as to the facts. I believe that would be a better way to handle it.

Mr. Downing:
No further questions.

Mr. Kurz:
No further questions.

The Court:
Come down, Mr. Reinoehl.

Mr. Shelton:
I am handing Mr. Kurz this list of all their employees alleged misclassified executive and administrative.

The Court:
Mr. Kurz, if you are not able to furnish that this morning before the Court recesses, you may supplement the exhibits that you just filed by turning those over to the clerk and I will make them a part of the same exhibit, and I so instruct the clerk to make them a part of the same exhibit.

Mr. Kurz:
Before we conclude, I understood Mr. Downing also had some additional supplement about accumulative hours.

The Court:
For his testimony?

Mr. Kurz:
Yes.

The Court:
He is coming on in rebuttal when you rest.

Mr. Kurz:

I want to have a little recess to discuss some matters with Mr. McGehee, and in the meantime we might also check this so there would not be any time lost to the Court.

The Court:

You want a recess before you announce closing?

Mr. Kurz:

Yes. Mr. McGehee said he wanted to talk to me about something relating to the case, and I think I would like to do that.

The Court:

How long will it take you?

Mr. Kurz:

About ten minutes.

The Court:

Then, you will be ready to close pretty promptly, and Mr. Downing can be prepared to go on in rebuttal.

Mr. Kurz:

In the meantime, Mr. Reinoehl can look over that list and check it.

The Court:

Court will be in recess for ten minutes.

(Ten minute recess.)

Mr. Kurz:

We have nothing further, your Honor.

The Court:
The defense rests

Mr. Kurz:
Yes

Mr. Downing
Your Honor, we offer as a supplement to the accumulated hours summary already in evidence an additional summary covering a number of ex-employees. I handed to Mr. Kurz a typewritten copy of the Government's exhibit 5 with the suggestion that if there are any errors in it, we will be glad to correct them.

The Court:
Any objection, Mr. Kurz?

Mr. Kurz:
We, of course, have had no opportunity to check the correctness or to know whether there are any special circumstances connected with any of the cases, and we reserve the right to check.

The Court:
You will be granted the privilege of doing that. Mr. Kurz will have the right to check it.

Mr. Downing:
I suggest it be marked as part of exhibit 5.

The Court:
All right

Mr. Downing:
Neither one of those summaries include Mr. Terrell. He has a separate accumulated hour record already in the record as a separate exhibit.

(The papers were attached to and made a part of government's exhibit 5.)

Mr. Downing:

We offer the exhibit previously marked for identification as number 15. The papers of Miss Margaret Oetgen at Savannah.

The Court:

Any objection, Mr. Kurz?

Mr. Kurz:

No objection.

The Court:

Let it be received in evidence.

(The papers were admitted in evidence and marked government's exhibit 15.)

Mr. Downing:

From the payroll records of Southern Industries, we offer the following information of record on E. C. Smith, the piece worker, covering the period from August 29, 1945, to February 20, 1945; in lieu of offering the actual record, we will state that our object is to prove during that period of time that E. C. Smith was employed as a piece worker at piece rates, and received no overtime pay in weeks when he was working overtime hours.

Similarly, in the case of D. N. Higginbothum, we offer from the records of Southern Industries his earning record for the week ending December 13, 1944, for the purpose of showing that he was employed at straight time piece rate, that he worked forty-seven hours and received no overtime pay.

The Court:
You mean that is an exhibit that you are submitting?

Mr. Downing:
Stating information shown by the record, and I am offering that in lieu of offering the original record.

The Court:
All right.

Mr. Downing:
For the purpose of summarizing the exhibits still to be offered, your Honor, I refer to the fact that earlier in the record we announced that we wished to offer the deposition from Pensacola, Orlando, Lakeland, and West Palm Beach, when they were received from the reporter. They are still not received.

The Court:
That was taken care of at the time your statement was made.

Mr. Downing:
Yes. And I also wish to refer again to the fact that we are reserving the right to offer the payroll books and records if that is necesary, and the computation of the back wages.

The Court:
All right, sir. Have you anything further?

Mr. Downing:
We have one witness that Mr. Shelton will put on.

442 REBUTTAL TESTIMONY.

Thereupon, RICHARD COURTNEY was called as a witness for the government in Rebuttal and being first duly sworn testified as follows:

Direct Examination.

By Mr. Shelton:

Q. State your full name.

A. Richard Courtney.

Q. You are in the employ of Southern Industries?

A. I am; machine adjuster.

Q. Do you recall an occasion recently when you had any discussion with any supervisory employee or foreman of the company with respect to whether or not you should be paid for a particular shift?

A. No, sir.

Q. I do not think you got what I was talking about—whether any time during the month of June, 1946, when you weren't paid for a shift when you—a shift or half a shift—whether any time this month when you failed to ge paid for either a shift or half a shift?

A. About June 4, I believe I missed a half day.

Q. Will you tell the Court what happened?

A. Well, I did not know it; I had to go out that day, and punch and punch in. As a result I missed punching back at noon time, and threw five and one-half hours off that afternoon.

Q. Did you take that matter up with anyone?

The Court:

That is all you want to show by this testimony?

Mr. Shelton:

Yes; that he took it up with the foreman, your Honor, and that the foreman admitted he knew he was working that shift.

The Court:

There isn't any controversy about that in this case, Mr. Shelton. The company has their clock down there that they punch, and they very frankly stated they have a rule that the employees are required to punch it, and if they fail to do so, they take the penalties.

Mr. Shelton:

All right.

The Court:

I do not think you need to make that cumulative.

Mr. Downing:

May I make this observation? Mr. McGehee was contending in his testimony that they had no way of knowing whether the employee was working or not, and this was showing that the foreman knew it.

The Court:

There has been testimony that they called it to the attention of their supervisor, and they have not disputed it.

Mr. Downing:

We have one exhibit which I overlooked. The Government offers in evidence the accumulated hours record which has been produced here as a part of exhibit 1 for identification, the accumulated hours account of Kenneth Voyle. I ask the clerk to remove it from the book.

The Court:
Any objection, Mr. Kurz?

Mr. Kurz:
No.

The Court:
Let it be removed from the book and received in evidence.

(The paper was marked Government Exhibit 1.)

Mr. Downing:
I will state the object of that offer. That record shows that the first week that Voyle was there he worked hours beyond the contract number; that he was not paid for them; that the credit was taken over to the next week, and offset against the deficit the following week.

The Court:
Is that all from the Government?

Mr. Downing:
That is all.

The Court:
Before the record is closed I want to ask counsel for both the government and for the defendants a question here that I think the record shows, but we can get it by agreement of counsel. I understand, Mr. Kurz, the defendants in this case have adopted no system by which they make a distinction of their employees as between those parts of their business that is purely and strictly intrastate and the parts that is strictly interstate.

Mr. Kurz:
That is correct.

The Court:

We have here the same situation that we had in the cold storage case here, where the employees did what they had to do, generally, in all instances.

Mr. Kurz:

Indiscriminately.

The Court:

Indiscriminately, Mr. Kurz?

Mr. Kurz:

Yes.

The Court:

There is nothing further for me to decide here.

Mr. Kurz:

I would like to look at the accumulated hour record which was just introduced.

The Court:

You may examine it, and if there is anything further you wish to offer you may submit it.

(Mr. Kurz examined papers.)

Mr. Kurz:

If the Court please, we are not in a position to look into that particular matter now because it has not come up, so we have no objection about this being a part of Government's record. We are not in a position now to make any explanation. Perhaps if there is one, Mr. Downing and I could agree on a stipulation.

Mr. Downing:

I will agree that the payroll records show that they were paid for that time, and let the evidence go before you.

The Court:

They were paid for it. You gentlemen make that a part of the record by stipulation?

Mr. Kurz:

Yes.

Mr. Downing:

There is one exhibit—Mr. Reinoehl had to check over a statement prepared by Mr. Carter on the intrastate branches. I wonder if that has been completed?

Mr. Kurz:

We have no testimony on that point, and the records are in.

Mr Downing:

That is Exhibit 10.

The Court:

All right.

Mr. Kurz:

If the Court please, we also offer an acknowledgment as to the basis of employment of R. F. Boykin or the payroll sheet as far as Boykin is concerned which somehow has gotten misplaced in the papers, but we would like to offer them in evidence.

Mr. Downing:

We have no objection, and if it can't be located we will be glad to stipulate whatever point is involved.

The Court:

Let the record show that it will be admitted in evidence and a substitute copy supplied if you can't find the original. I expect you will find it among some of your papers.

How long do you think it will be before the depositions taken at the other points will be ready for filing?

Mr. Downing:

They should be here by now.

The Court:

Then, we are in a position where this matter can be briefed and submited to the Court on briefs.

Mr. Downing:

Yes.

The Court:

How long do you gentlemen want to prepare your briefs?

Mr. Downing:

I understand the Court reporter is a man who is jammed up. We could undertake a preparation of the brief as soon as we get the record, and it is my understanding it will be quite a long time before we can receive the record.

The Court:

That is true. Are you in a position now to give the Court reporter an order for the record?

Mr. Downing:

Yes; we want the original, of course, and two carbon copies of the record.

The Court:

If that is the situation, what we will do is this; we will fix the date for the briefs at whatever period you will need, after you receive from the Court reporter a copy of the transcript.

Mr. Downing:

I might say that we could brief this without the record, but when we come down to the executives we are going to have to have the record so we can refer to that particular testimony.

The Court:

I think we might just as well handle this case properly, and instead of trying to take it piece meal, do you need thirty days after you get the record?

Mr. Downing:

That would be my guess.

The Court:

You need the same length of time?

Mr. Kurz:

I think so, your Honor.

The Court:

How long do you need for the reply brief?

Mr. Downing:

I suggest oral argument.

The Court:

I believe it would be better to have the oral argument after we get the briefs. I will set this argument down

for the last week in October, and I will put this down for one day at the end of my term here in October.

(Arguments.)

The Court:

The Court will take this case under advisement and dispose of it just as promptly as we can.

Mr. Downing:

Thank you, your Honor, for your patience.

Mr. Kurz:

Thank you, your Honor.

(Thereupon, at 12:30 o'clock, P. M., June 20, 1946, the Court adjourned.)

449 OFFICIAL COURT REPORTER'S CERTIFICATE.

I, O. W. Stiegler, official Court reporter of the United States District Court for the Northern and Southern Districts of Florida, do hereby certify that the foregoing pages, number 1 to 489, inclusive, constitute a complete, true, and correct transcript of my shorthand report of the testimony and proceedings had, taken and received at the trial of the within entitled cause, before the Honorable Dozier A. DeVane, United States District Judge, at Jacksonville, Forida, commencing on June 17, 1946 and concluded on June 20, 1946.

In Witness Whereof, I have hereunto signed my name at Orlando, Orange County, Florida, this 15th day of August, 1946.

O. W. STIEGLER,
Official Court Reporter.

(Seal)

Filed in Evidence Jun. 18, 1946.

In the District Court of the United States for the Northern District of Florida, Jacksonville Division.

L. Metcalfe Walling, Administrator, etc.,
vs. Civil Action #209-J.
Jacksonville Paper Company, et al.

I, John Z. Ryan, a Notary Public of Chatham County, Georgia, and an officer authorized by law to administer oaths, do certify that pursuant to the stipulation of the above parties by their counsel, dated May 16th, 1946, I did on May 31st, 1946, at 10:00 o'clock A. M., at Room 333, Post Office Building, in Savannah, Chatham County, Georgia, proceed to take the depositions of Mrs. Margaret Oetgen Burke, Charlie Walker, Miss Mamie D. Proctor, Herman J. Sanders, and Amos Paul Cox, witnesses on behalf of the Plaintiff, and R. E. Cox, witness on behalf of the Defendants, who, after being by me first duly sworn, testified as hereinafter set forth; said testimony being upon oral examination, being transcribed by me, and reduced to writing by me, pursuant to said stipulation.

There were present Mr. James H. Shelton and Mr. George A. Downing, of Atlanta, Georgia, Attorneys for the Plaintiff, and Mr. Louis Kurz, of Jacksonville, Florida, Attorney for the Defendants.

Stipulation: It was stipulated and agreed between counsel for the respective parties that the following named employees have performed work within the general coverage of the Fair Labor Standards Act during all weeks of their employment for the Atlantic Paper Company since August 29th, 1941; Mrs. Margaret Oetgen Burke, Miss Mamie D. Proctor, Herman J. Sanders, Amos

Paul Cox, Charlie Walker; and Mrs. Anthony M. Santos.

MRS. MARGARET OETGEN BURKE, witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

452 Direct Examination.

By Mr. Shelton:

Q. You are Mrs. Margaret Burke?

A. Yes, sir.

Q. Were you formerly employed by the Atlantic Paper Company?

A. Yes, sir.

Q. Did your name appear on the company's pay roll as Margaret Oetgen?

A. Yes; Margaret Oetgen.

Q. Is the Atlantic Paper Company a branch of the Jacksonville Paper Company?

A. That's right.

Q. When did you start to work for the Atlantic Paper Company?

A. In July 1939.

Q. When did your first period of employment with the Company end, when you left them the first time?

A. I believe it was in 1943.

Q. If the company records show you stopped working there March 20th, 1943, would that be right?

A. Just about that.

Q. If the company records show you came back to work January 18th or 19th, 1944, would that be right?

A. Yes, sir.

Q. When did you quit work the last time?

A. March 17th, 1945.

Q. In other words, you were employed there something like 13½ months, a little over 13 months?

A. Yes, sir.

Q. Do you recall the time, during your first period of employment, when you were discharged by the company on Saturday and re-hired on Monday?

A. Yes, sir; I was.

Q. If the company records should show that the date of your discharge was April 27th, 1940, and that you were re-hired on Monday, April 29th, 1940, would that be correct?

A. It was a Saturday and a Monday; I am not positive about the dates; I testified to that before; I had the correct dates that time, because that was nearer the time, and I remembered it.

Q. Mrs. Burke, after you were re-employed on April 29th, 1940, did you start keeping any different record of hours worked, that were different from the records kept before?

A. I believe there was an accumulation of hours that we kept.

Q. During the period from August 29th, 1941, through March 20th, 1943, whose duty was it to keep a record of accumulated hours of employees of the Atlantic Paper Company?

Mr. Kurz:

I object to the question on the ground that it is irrelevant and immaterial, in that the final decree in this case was not entered until June 3rd, 1943, and all prior matters are not pertinent to the issue now tried.

A. As far as I remember, I was the one supposed to keep the record; I did keep them; I don't know whether that was when I started there.

Q. State whether it was your regular duty to keep the record of accumulated hours?

A. I don't remember whether it was when I started there, but I did keep them until I left.

Q. I show you a copy from the company's records on accumulated hours, and I will ask you if this was the blank on which the record of accumulated hours was kept by you?

A. Yes, sir, it is.

Q. I call your attention to the entry of December 27th, 1941, showing that in that week you worked 38 hours and 5 minutes, and direct your attention to the fact that the record also shows that the difference between the 38 hours and 5 minutes and the allowable amount of 56½ hours, which difference amounted to 18 hours and 25 minutes, was carried forward into an entry called "Prepaid hours bro't forward"?

Mr. Kurz:

I object to that on the ground that the record is the best evidence.

Mr. Shelton:

This is preliminary to something else.

Q. Mrs. Burke, according to this, you would have worked in that week less than 40 hours?

A. Yes, sir.

Q. In keeping this record of accumulated hours, when you transferred the hours to the "Prepaid hours bro't forward" account, you did not make any distinction between straight work hours and overtime hours?

A. No.

Q. So that, in building up that total of accumulated prepaid hours, you would put the hours going before 40 in a week the same as those worked after 40 in a week?

A. Yes, sir.

Mr. Shelton:

The Plaintiff will offer this sheet, which is marked on the bottom "Sheet 15", as Plaintiff's Exhibit #1 for identification.

Q. Mrs. Burke, do you recall another occasion when depositions were taken in a case by the Wage Hours Administrator against the Jacksonville Paper Company, on January 16th, 1941?

A. Yes, sir.

Q. Do you recall your testimony at that time?

A. Yes, sir.

Q. You made a statement?

A. Yes, sir.

Q. Your statement was true at that time?

A. Yes, sir.

Q. I will ask you whether from time to time after August 29th, 1941, employees of the Atlantic Paper Company did not receive salary increases?

Mr. Kurz:

I would like to say that as to all matters dealing with before June 3rd, 1943, we make the same objections, to avoid repetition.

A. I don't know. I know a few.

Q. Mrs. Burke, I will direct your attention to Plaintiff's Exhibit #1 for identification and ask you if it does not show that for the week beginning October 4th, 1941, there was an increase in your allowable hours to 56½ hours from 51¾?

A. Yes, sir.

Q. At the time that happened do you know whether or not you also got a salary increase?

A. I evidently did.

Q. I will direct your attention to the hours worked by you for the period before the week ending October

4th, 1941, and the week immediately after that, and ask if you were not working about the same hours after October 4th as before?

A. Yes, sir.

Q. I will also direct your attention to the entry of September 27th, 1941; accumulated prepaid hours 181 hours and 20 minutes; I ask you whether since you continued after that time to work about the same hours—

A. I don't quite get what you mean.

Q. You had been building up before that accumulated prepaid hours?

A. Yes, sir.

Q. That had run up to 181 hours and 20 minutes?

A. That's right.

Q. When you got an increase in allowable hours and continued to work the same hours, that would throw you farther out of balance?

A. That's right.

Q. At the time that you resigned from the company, March 20th, 1943, I direct your attention to this same entry of accumulated prepaid hours, which purports to show that you accumulated 961 hours and 50 minutes as due this company and ask you if that is correct?

Mr. Kurz:

I object on the ground that the record is the best evidence.

Q. State whether that is in accord with your best recollection?

A. As far as I remember, that's about right.

Q. At the time you left the company's employ in March 1943, did anyone tell you you owed the company anything or make any demand that you should pay the company any money?

A. No, sir; never.

Q. Mrs. Burke, at any time prior to that did anyone tell you that you were building up any liability to the company?

A. No.

Q. I direct your attention to the week ending March 20th, 1943, the company records showing you worked only 8-1/2 hours that week; state whether you were paid a whole week salary for that 8-1/2 hours?

A. As far as I remember, I was.

Q. You testified you were re-employed by the company about January 18th, 1944?

A. That's right,

Q. At the time you were re-employed by the company, state whether anything was said to you by anyone about you owing the company anything as a result of your previous employment?

A. Nothing was said at all.

Q. During the whole period of your first employment, after August 29th, 1941, was a record kept of the hours you worked?

A. Yes, sir.

Q. When you came back in January 1944, in the beginning, was a record kept of the number of hours?

A. No; at first I was under the impression I was not supposed to keep check.

Q. During that period, beginning in January 1944, what time would you come to work in the morning?

A. 8:20.

Q. Would you have a meal period in the middle of the day?

A. Yes, sir; one hour.

Q. What time would you go home at night?

A. 6:00 o'clock.

Q. Would that be the same schedule every day?

A. Except Saturday; we worked until 1:00; no lunch hour.

Q. On week days 8:20 to 6:00 with an hour for dinner, and on Saturdays 8:20 to 1:00 o'clock?

A. That's right.

Q. Was that your regular schedule of work?

A. Do you mean hours?

Q. Were those the hours that you actually worked?

A. Yes, sir; at times I might have to work a little over.

Q. Do I understand that you never worked less than schedule, beginning in January 1944?

A. No.

Q. You never did?

A. No. Just what do you mean by that?

Q. You say sometimes you worked longer; I ask you whether you ever worked less than that?

A. No, except on holidays and around Christmas.

Q. How much time off for Christmas?

A. As I remember, we would get off part of Christmas Eve and Christmas day.

Q. What other holidays?

A. Several other holidays, I think, but I don't remember which ones they were.

Q. Do you remember some of those holidays; for example, did you get off on July 4th?

A. I don't believe we did.

Q. Did you get Labor Day?

A. No; I think we got Christmas, and New Years, I believe; I am not positive.

Q. Did you get Thanksgiving?

A. I think we did; about three or four of them; I don't remember.

Q. Did you get Southern Memorial Day?

A. No.

Q. As far as you remember, Thanksgiving, Christmas and New Years?

A. I think that's about correct.

Q. And Christmas Eve you got half a day off?

A. That's right.

Q. During the period from January 1944 through up to the time you left in March 1945, did you miss any times account of illness.

A. No, sir.

Q. Did you get any vacations?

A. I went back there in January 1944; I was married in December 1944; I had one week off then.

Q. You went there in January 1944?

A. Yes; and I was married in December 1944.

Q. Did you get some vacation?

A. I got a week then.

Q. Was that in December 1944 or January 1945?

A. No; I got married in December; it could not be in January.

Q. Were you paid for that week?

A. Yes, sir.

Q. As far as you recall, did you get another vacation from January 1944 through March 1945?

A. No, sir.

Q. Was there a period after January 1944 when you again started recording the hours of work?

A. Yes, sir; I believe Mr. Cox told me. I thought I did not have to.

Q. The company records will show when you began keeping records, but would that be around December 1944?

A. I don't remember the date.

Q. Beginning in January 1944 and continuing until the time you again started keeping records of hours; you have stated that you sometimes worked over the time schedule; how often would you do that?

A. Not very often; no one worked according to the exact minute of the day.

Q. On the average, would you have worked a little more than that schedule or not?

Mr. Kurz:
I object to the question; it calls for a vague and indefinite answer.

Q. Mrs. Burke, what would have been the occasion for your working beyond the 6:00 o'clock quitting time or 1:00 o'clock on Saturday?

A. The work might be heavy on a certain day.

Q. What is the longest time you remember working beyond the regular quitting time?

A. I don't remember.

Q. As near as you can remember?

Mr. Kurz:
I object to the question; the witness has stated she cannot remember.

Q. Mrs. Burke, during the period we are talking about, from January 1944, would you ever come in late in the morning?

A. Not very often; the records will show when I signed; you could not punch a clock the exact minute every morning and the exact minute every night, to save your life.

Q. You said a little earlier you never kept a record, and we are beginning in January 1944 and running until around September; that is the only period we are talking about, when you did not keep a record; during that period would you ever be late in the morning?

A. I assume so.

Q. If so, would you make up the time at night before you left?

A. Usually.

Q. Mrs. Burke, you have testified about this accumulation of hours built up against you during your first period of employment: when you returned to work in January 1944, were any of those accumulated hours charged against you?

A. No.

Q. Any liability to the company for that early period?

A. No.

Q. Was anything said to you, when you returned in 1944 or afterwards, about making deductions from your pay to liquidate that obligation?

A. No.

Q. Was any new accumulated hours record kept on you until the time you started recording those hours again?

A. When I came back the second time?

Q. When you went back the second time?

A. Not at first.

Q. Did they start to keep such records when you started recording hours of work again?

A. Yes, sir.

Q. Did they start a new record then or with the accumulated hours from your earlier employment?

A. A brand new record.

Q. That earlier accumulated hours total was entirely forgotten?

A. That's right.

Q. Mrs. Burke, during the second period of your employment from January 1944 through March 1945 were your duties practically the same the whole period?

A. Yes, sir.

Q. What were your duties?

A. I was bookkeeper; I handled the cash, and I checked sales and made bank deposits; I made the pay roll and other general office work.

Q. In connection with those duties you have just testified to, did you use a bookkeeping machine to do the posting?

A. Yes, sir.

Q. Will you state as well as you can, during that last period of employment, what part of your time was spent in bookkeeping work?

A. I posted all the cash to the accounts.

Q. As well as you can come at it, what part of the day would you spend in bookkeeping work during that last period?

A. I don't know; that would vary.

Q. As a matter of fact, Mrs. Burke, was not the greater part of your work bookkeeping?

Mr. Kurz:

I object to the question as leading.

A. Yes, sir.

Q. During this last period of employment, how much were you paid when you came back to work?

A. $35.00 a week, I believe.

Q. Do you recall whether your salary was later increased during that period?

A. It seems just before I left there was an increase; I am not positive.

Q. State whether or not, during your last period of employment with the company, you were paid a bonus?

A. The last part. I don't remember what it was.

Q. During your first employment, wher you paid a bonus at the end of your first employment, ending in March 1943?

A. Yes, sir; I was getting a bonus.

Q. Do you remember how long you were getting that bonus before you left in March 1943?

A. No; I don't remember exactly.

Q. The records will show; will they not?
A. Yes, sir.
Q. How many times a year was that bonus paid?
A. It was paid monthly.
Q. Were you familiar with the basis on which other employees were paid a bonus?
A. No.
Q. Do you know whether your bonus was paid on the same basis as the other employees?

Mr. Kurz:
I object; the witness does not know.

Q. Do you know whether yours was on the same basis as the others?
A. It seems like a form letter was sent around, specifying the percentage to be paid.

Mr. Kurz:
I object on the ground that the witness has not sufficient specific information.

Q. Is it your understanding that the bonus was paid for the work done?
A. Yes, sir.

Mr. Kurz:
I object to that as a conclusion of the witness.

Q. During your second period of employment, beginning in January 1944, who supervised your work?
A. The last part?
Q. Yes?
A. Mr. Cox and Mr. Humpidge.
Q. Do you mean Mr. R. E. Cox?
A. Yes, sir; Reginald E. Cox.

Q. During that second period of employment, did you supervise anyone there?

A. No.

Q. Did you have authority to hire or fire anyone during that period?

A. No.

Q. Did you make recommendations to anyone as to whether employees should be hired or fired?

A. No, sir.

Q. Did you have the right to make such recommendations?

A. Well; I don't know about that.

Q. Did anybody tell you that you were authorized to recommend about hiring or firing?

A. No.

Q. In what department were you employed during the second period?

A. Bookkeeping department.

Q. Who was head of the bookkeeping department?

A. Mr. Cox.

Q. Mrs. Burke, what were the duties of Mr. R. E. Cox with the company; what did he do?

A. I don't know; he was credit manager; I don't know what all his duties would be; it would be hard for me to answer.

Q. Did he have charge of the office there?

A. Yes, sir.

Q. State whether or not Mr. Humpidge spent a considerable part of his time outside the office?

A. Yes, sir.

Q. When Mr. Humpidge was out of the office who was in charge of the whole warehouse?

A. Mr. R. E. Cox.

Q. Mrs. Burke, beginning at the time that you were fired on Saturday and rehired on Monday, did anybody indicate to you at any time that you were building up a

lot of accumulated hours with the company that you might have to pay back at a later time?

A. No.

Q. Do you remember a woman there, a Mrs. Anthony M. Santos?

A. Yes, sir.

Q. Do you recall whether or not Mrs. Santos was paid a bonus?

A. I don't know.

Q. What was the job of Mrs. Santos?

A. She was a clerical worker.

Q. State whether or not she worked in the same office with you?

A. Yes, sir; in the same office.

Q. Mrs. Burke, you have testified before about your bookkeeping duties the second period of your employment: I know it would not be exact, but I want you to estimate as near as you can the proportion of time you would spend in bookkeeping and related duties?

A. That would be hard to say, because it would vary according to payments received; different parts of the month, more payments on account; that would be hard to say for any length of time.

Q. State whether or not it was part of your duties to get up statements of what customers owed the company: did you make up those statements?

A. It was not my duty, but I helped do that.

Q. Were those statements prepared for some customers and for some monthly?

A. That's right.

Q. State whether or not you spent a substantial portion of your time in making up such statements?

A. I just helped out when rushed.

Q. What were among your many bookkeeping duties?

A. Posting the cash received and sometimes posting sales.

Q. Who would check the bank statement during your second period of employment?

A. What do you mean?

Q. When you got a statement back from the bank, who would check that?

A. We did not get a statement.

Q. I want you to say, as well as you can, the proportion of your time in the second period spent in bookkeeping and related duties?

Mr. Kurz:

I object; the witness has already said she did not know.

Mr. Shelton:

I will withdraw the question.

Q. Mrs. Burke, during your second period of employment, who would pay the employees off other than you? In other words, it was the custom to pay off weekly?

A. That's right.

Q. Who would actually pay the men other than you?

A. I paid them off.

Q. Who paid them off?

A. I did.

Q. You paid yourself off too?

A. Yes, sir.

Q. When an employee would leave the company, state whether or not, during this period, he would be paid for the last week regardless of whether he had accumulated hours placed against him?

A. Yes, sir.

Q. Do I understand that when paying off an employee you would not pay any attention to the accumulated hours against him?

A. That's right.

Q. Did anyone ever instruct you to do otherwise?

A. No.

Q. Within your knowledge, was any employee leaving the company ever asked to make payment to the company on the basis of the accumulated hours he was due the company?

A. No.

Q. You have testified that beginning around September 1944 you again started keeping records of your work hours; you have the approximate time?

A. Around that time, I presume.

Q. When you started again, did you keep a record continuously until you left?

A. It was kept; I did not keep it.

Q. Going back to the time you left the company's employment there back in March 1943; do you remember who paid you off?

A. Mr. R. E. Cox, I believe.

Q. I believe you testified you were paid for part of a week?

A. That's right.

Q. State whether anything was said to you about owing the company anything for accumulated hours?

A. Not a thing was said.

Q. At any time since then, including up to now, has any demand ever been made on you to pay for any accumulated hours due the company?

A. No.

Q. When you left the company's employ in March 1945, did you at any time have a record of accumulated hours?

A. Yes, sir.

Q. Do you remember how many hours that would have been?

A. I don't know.

Q. No demand was made on you that you pay them?
A. No.

Mr. Shelton:
I will offer this sheet marked Plaintiff's Exhibit #2 for identification; it is marked Sheet 14.

Q. Mrs. Burke, I will show you two pieces of paper, one a green sheet and the other white, and ask you what they are for?
A. Forms that we filled out when we were employed.
Q. State whether or not when re-hired in January 1944 you filled out similar forms?
A. Yes, sir.
Q. With respect to the white form on the front; state whether or not, when you received an increase in pay, the white form was filled out by you?
A. As I remember, it was.
Q. I will ask that you examine these and ask if they appear to be correct copies of forms you filled out when re-employed in January 1944.
A. Yes, sir; they seem to be all right.

Mr. Shelton:
I will ask that the white sheet be marked Plaintiff's Exhibit 3 (a) for identification and that the long green sheet be marked Plaintiff's Exhibit 3 (b) for identification.

Cross Examination.

By Mr. Kurz:
Q. These two sheets marked Plaintiff's Exhibits 3 (a) and 3 (b) for identification; you say they are correct; is that your signature on the white and green sheets?
A. No; not my signature; they are just copies.

Q. In whose handwriting are the figures on the green sheet?

A. I don't know; not mine; I think they came by the place to check on them; I don't remember who it was though.

Q. I hand you herewith statement marked Plaintiff's Exhibits 1 and 2; are those in your handwriting?

A. No, sir.

Q. When you were re-employed by the company in January 1944, did you make an application for employment that you filled out?

A. You mean did I apply?

Q. Did you sign a form of application for employment when re-employed?

A. You mean forms like these?

Q. Did you fill out any forms when re-employed?

A. Yes, sir; I filled out forms similar to these.

Q. Exhibits 3 (a) and 3 (b)?

A. Yes, sir.

Q. But Exhibits 3 (a) and 3 (b) are not the originals or copies of the forms you filled out?

A. They are copies of the originals.

Q. Were they made at the same time?

A. No; they were not carbon copies.

Q. When you left the employ of the company in March 1943, you said no demand was made on you for accumulated hours that you had accumulated or not worked; what means did you have at that time to pay if a demand had been made on you?

Mr. Shelton:—

I object to that as irrelevant and immaterial.

Q. Did you have any way in which to pay them?

A. No; I don't imagine I did have.

Q. Did you have any property at that time?

A. No.

Q. When you left the employment of the company in March 1945 did you have any property?

Mr. Shelton:

Plaintiff's objection will be considered as applying to all this line of questioning.

Q. You were married then?

A. Yes, sir.

Q. Did you have any property at that time?

A. Not at that time; no, sir.

Q. When you were re-employed by the company in January 1944 did anyone tell you not to keep a record of your hours of work?

A. No, sir.

Q. Before that time, when you left in March 1943, you had kept a record of the hours?

A. Yes, sir; I was doing a different job.

Q. When re-employed you were not told specifically to keep a record?

A. That's right.

Q. And you were not told not to?

A. That's right.

Q. How did the matter of keeping records come up, when you started keeping them again?

A. I don't remember that; it seemed like somebody keeps it; and they asked me, but I don't remember who it was.

Q. Did you say Mr. Cox told you that you had to keep a record?

A. It evidently was Mr. Cox.

Q. In other words, when somebody noticed you were not keeping a record somebody in the office told you that you had to keep a record?

A. Yes, sir.

Q. And from that time on you kept that record?

A. Yes, sir.

Q. When you were re-employed were your duties the same as before you left in March 1943?

A. No, sir.

Q. What were your duties when re-employed?

A. Bookkeeper.

Q. Did you pass on credits at that time?

A. I passed on some; not on new accounts, but on accounts outstanding that had good credit.

Q. You did have that duty to pass on credits?

A. Yes, sir.

Q. During that period of your second employment, you handled all cash and made all bank deposits?

A. I made the bank deposits, but Mr. Cox handled some of the cash.

Q. Who kept the records of the cash received and accounts due the company?

A. Cash received?

Q. Yes?

A. Unless they were kept in the regular cash book.

Q. Who kept that?

A. I kept that.

Q. Who kept in touch with the past due accounts?

A. Mr. Cox.

Q. Did you do any of that?

A. No.

Q. You stated on direct examination that, so far as you knew, no demand was made of other employees who left the employ of the company, for accumulated hours; do you know whether or not Mr. Cox or Mr. Humpidge made such demands?

A. Not as far as I know.

Q. Would you know if they had made them?

A. Not on anybody else.

Q. When you testified before, it was as far as your own knowledge was concerned?

A. That's right; I never knew it to happen.

Q. You made no such demand?

A. No, sir.

Q. Whose duty was it to make such demand, if made?

A. I presume Mr. Cox; I don't know.

Q. Did anyone tell you you were not supposed to keep a record of hours when you were re-employed?

A. No.

Q. No one told you not to keep a record?

A. No.

Q. Why did you not keep it?

A. I was under the impression the job I was doing then did not require it.

Q. Where did you get that impression?

A. It sounds silly, but Mr. Cox, when he was bookkeeper before I went back; he did not keep it and I thought—I don't know. I just assumed that I was not supposed to.

Q. Mr. Cox was office manager?

A. Yes, sir.

Q. At the time you were re-employed what were Mr. Cox's duties?

A. He was still office manager.

Q. Did he spend all of his time in the office?

A. No; some time in the warehouse.

Q. When he was not in the office here who was in charge?

A. Mr. Humpidge was usually there if Mr. Cox was not there.

Q. You were not in charge of the office?

A. Not exactly; I don't know how to answer that.

Q. Did it ever happen that Mr. Humpidge and Mr. Cox were both out?

A. Yes. sir.

Q. Who was in charge then?

A. They kinda looked to me, I imagine.

Q. Suppose that during that time someone came in and wanted to buy on credit; would you have the right to check on that and approve it?

A. If a new customer he was looked up in Dun & Bradstreet, and if the rating was good and the amount not too much, I was allowed to pass on it; otherwise, I was not; the man would just have to wait.

Re-Direct Examination.

By Mr. Shelton:

Q. Mrs. Burke, in response to a question by Mr. Kurz, you testified that some man came there and made these copies, which were offered as Plaintiff's Exhibits 3 (a) and 3 (b): did you mean the wage hour inspector?

A. Yes, sir.

Q. You were asked on cross-examination about your failure during your second employment to keep a record of hours worked, and you said on cross that it was not noticed or words to that effect, that your failure to keep a record lasted for eight months?

A. I don't know exactly; I presume so.

Q. Who passed on the extension of credit for new accounts?

A. Mr. R. E. Cox.

Q. Mrs. Burke, each time that you have referred in your testimony to Mr. Cox you have always meant Mr. R. E. Cox?

A. Yes, sir.

Q. State whether or not you had authority to sign checks?

A. No, sir.

Q. State whether or not the cash you handled was petty cash?

A. Petty cash.

Q. State whether or not you handled all the petty cash?

A. Yes, sir.

Q. Did Mr. R. E. Cox handle the petty cash?

A. Occasionally, if I was busy or not there.

Q. With respect to any efforts to collect hours due from employees leaving the company or who had left: if such demand had been made whose duty would it have been to post these amounts?

A. I don't know how that would have been handled.

Q. To the best of your knowledge, if such collections were made, whose duty would it have been to have posted the amounts received?

Mr. Kurz:

I object to the question. The witness does not know.

A. I don't know; I presume Mr. R. E. Cox.

Q. Did you yourself ever make such an entry or did anyone ever report to you any such collections made?

A. No.

Q. You have testified that if Mr. R. E. Cox and Mr. Humpidge were both out of the office you were looked to as in charge: how often would it happen that both of them would be out of the office?

A. Not very often.

Q. When both out of the office would one of them be in the warehouse?

A. Not necessarily.

Q. When both of those men were out of the office and off the premises; in other words, when out of the building, approximately how long would such period last?

A. I don't know; that would vary on what they would have to leave for.

Q. A short period or a long period.
A. I could not say.
Q. What is the longest period you recall when you were on your own in the office because both Mr. R. E. Cox and Mr. Humpidge gone?

Mr. Kurz:
I object to that because the witness does not know.

A. I don't remember any special time.
Q. Would it ever have been a whole day?
A. No.
Q. State whether half a day?
A. I don't know; I could not very well say accurately

Re-Cross Examination.

By Mr. Kurz:
Q. Mr. Shelton asked you about handling petty cash; is that the only cash you handled?
A. No; petty cash and payments on account.
Q. Petty cash would be a fund for the payment of small bills and similar items?
A. Yes, sir.
Q. Did you pay bills out of the petty cash?
A. What bills?
Q. Small bills for freight?
A. Freight bills; yes, sir.
Q. And various small items; office supplies and things like that?
A. Yes, sir.
Q. You made payments out of petty cash?
A. Yes, sir.
Q. And also, in addition to that, you handled the cash collections and the checks that came in?
A. Yes, sir.

Q. You said that new accounts would have to be approved by Mr. Cox?

A. Yes, sir.

Q. Did you not also testify that if Mr. Cox and Mrs. Humpidge were out and somebody came in, you would look them up in Dun & Bradstreet and pass on them if not too much?

A. Yes, sir.

Re-Direct Examination.

By Mr. Shelton:

Q. During your second period of employment, how many times do you remember passing on credit for new accounts?

A. I don't remember that.

Q. With respect to the collections: were the collections received by the company usually by check, not cash?

A. That's right.

Q. Did you get more money by check or cash?

A. I presume by check; I don't know.

Q. When you got checks you handled them?

A. Listed in the cash book and posted. I put them in the cash book.

Q. How was the cash coming in handled?

A. Listed in the cash book against the customer's name.

Q. On an average, how many hours a day would you spend collecting cash received from customers?

Mr. Kurz:

I object to that; the witness has repeatedly stated she did not know.

A. That would be a little hard to answer; it would vary, as I said before.

(The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

Stipulation.

It was stipulated and agreed between counsel for the respective parties that either side may offer the depositions taken in the original proceeding in 1941, subject to the right of Defendants to object to testimony as to any matters occurring prior to June 3rd, 1943, as being immaterial.

477 CHARLIE WALKER, witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

Q. You are Charle Walker?

A. Yes, sir.

Q. Charle, were you employed by the Atlantic Paper Company, first as truck driver and later in the warehouse?

A. Yes, sir.

Q. If the company records show that about April 1943 you were transferred from truck driver to the warehouse, would that be about right?

A. I think about right.

Q. After you were transferred to the warehouse, will you tell us whether or not you ever went back to truck driving?

A. No, sir, not at regular work.

Q. Did you drive a truck occasionally?

A. Yes, sir; in case of emergency and nobody there.

Q. How often would you have to do that?

A. Sometimes once a week, sometimes not that much.

Q. What were you doing in the warehouse?

A. Almost anything; no shipping clerk at the time I was put there; it was up to me and Mr. Cox and Mr. Humpidge; unloading cars and getting up the freight; they did the shipping, but I got it up; I knew the house from start to finish.

Q. Beginning at the time you went in the warehouse, do you remember on what basis the company paid you?

A. You mean from the time I went on the job?

Q. No; from the time you went in the warehouse?

A. From the time I went in the warehouse they gave me $18.00 a week.

Q. Who was the manager there when you were in the warehouse?

A. Mr. Cox and Mr. Humpidge.

Q. Do you remember any conversation you had with Mr. Humpidge as to how you were paid? Did you have any discussion with him as to whether paid a salary or an hourly rate?

A. No, sir; I got paid by the week.

Q. In addition to being paid a salary, were you paid a bonus?

A. Yes, sir.

Q. How many times a year were you paid a bonus?

A. Once a month.

Q. Once a month?

A. Yes, sir.

Q. I show you a couple of pieces of paper; one a green sheet, and one a white sheet; these are not yours, but I will ask you if you remember while there signing pieces of paper with this information of this nature on them?

A. No, sir.

Q. You don't remember signing them?

A. No, sir.

Q. Did anyone there ever tell you you were being paid by the hour?

A. No, sir.

Q. At any time, either before or after you left the company, did anybody tell you that you owed the company or ask you to pay for any hours you owed them?

A. No, sir; when I left there I owed Mr. Cox $10.00; I went to his house on 52nd Street; he used to lend me money.

Q. Did you pay Mr. Cox that $10.00?

A. Yes, sir.

Q. Charle, when working there in the warehouse, what time did you usually come to work in the morning?

A. 8:00 o'clock.

Q. Was a record kept of the hours you worked there?

A. Yes, sir.

Q. Did you sign in and out for lunch?

A. Yes, sir.

Q. Was that record kept the whole time you were there?

A. No, sir.

Q. Was it kept the whole time you were in the warehouse?

A. Yes, sir.

Q. Did anybody ever tell you if you did not work any particular hours, 55 or 60, you were building up any liability to the company?

A. Mr. Humpridge said 55 hours or something; to tell the truth, I did not count on that.

Q. Did anyone ever tell you if you did not work 55 hours you were building up a debt to the company?

A. No, sir.

Q. Do you figure that you owe the company anything?

Mr. Kurz:

I object to that as vague and indefinite and it calls for a self-serving declaration.

A. No, sir.

Q. Was there ever any time when you would work more than 55 hours a week?

A. Yes, sir.

Q. If you did did you get any more pay?

A. When I worked in the house I never worked overtime.

Q. I am asking about your work in the warehouse?

A. No, sir.

Q. Do I understand that in the warehouse, you seldom, if ever worked over 55 hours?

A. No, sir; I did not.

Q. When working in the warehouse did you get any extra money beyond your weekly salary?

A. No, sir.

Cross Examination.

By Mr. Kurz:

Q. Charlie, when you went to work in the warehouse, you said there was no shipping clerk?

A. I would not say exactly whether there was or not.

Q. Who was the shipping clerk when you were on the truck?

A. To tell the truth, I could not tell you; they had so many, I could name some; Mr. Moore; so many I could not name them all.

Q. You don't know who was the shipping clerk just before you went there?

A. No, sir; when I was in the house they would have somebody for a week and he would be gone; Mr. Cox and Mr. Humpidge looked after it.

Q. When they did not have a shipping clerk, Mr. Cox and Mr. Humpidge were in the warehouse?

A. They would come in there; so far as selling a man anything I had nothing to do with that.

Q. You knew the warehouse pretty well?

A. Yes, sir; so far as getting up the stuff; I knew where it was and all, but I could not give them any prices.

(The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

481 MISS MAMIE D. PROCTOR, witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Shelton:

Q. You are Miss Mamie D. Proctor?

A. Yes, sir.

Q. Are you now employed by the Atlantic Paper Company?

A. Yes, sir.

Q. Which is a division of the Jacksonville Paper Company?

A. Yes, sir.

Q. How long have you been employed by the company?

A. Three years and one month.

Q. Has that employment been continuous?

A. Right straight on; yes, sir.

Q. Have you while employed there always kept an accurate record of the hours you worked?

A. Yes, sir; I have to sign a sheet every morning when I come in and when I go out and at at dinner.

Q. The whole time you have been there that record has been kept?

A. Yes, sir.

Q. And it is accurate?

A. As far as I know.

Q. How much are you paid?

A. $27.45 weekly.

Q. Do you also get a bonus?

A. Now I do.

Q. How often is the bonus paid?

A. Every month; twelve months a year.

Q. How long have you been getting that bonus?

A. It started in June.

Q. You have been getting a bonus every month since June 1943?

A. Yes, sir.

Q. Do you know how that bonus is calculated?

A. I think I do; so much is taken out, for social security 27¢ a week, I think, and then $3.08 or $3.07 for federal taxes.

Q. I think you misunderstood me; I am not interested in the deductions, but how the bonus is calculated and paid each month?

A. No; I don't recall how that is calculated; I just get the amount each month; so much; I never ask about that; I am just glad to get it.

Q. Miss Proctor, I show you here a green sheet and a white sheet, which has been offered as Plaintiff's Exhibits 3 (a) and 3 (b) for identification, and ask, when you were employed by the company, will you state whether or not you signed a green form like this?

A. I signed this white form, Exhibit 3 (a).

Q. Did you also sign a green form, like Exhibit 3 (b)?

A. I judge I did, but it has been so long I don't remember.

Q. Since there have you received any raise in pay?

A. Yes, sir.

Q. When you received a raise in pay did you sign a sheet like this, this white sheet Exhibit 3 (a)?

A. No; just this one sheet; I don't recall signing any other.

Q. Do you recall how many raises you have had?

A. Just one raise.

Q. When was that?

A. It seems to me like this past January.

Q. 1946?

A. Yes, sir; I think so.

Q. At that time, about four months ago, you don't recall signing a new white sheet?

A. No; I don't recall ever signing but one.

Q. Miss Proctor, when you were first employed by the company, what was your salary?

A. I declare I don't know; I just don't recall how much it was; it seems to me like $25.00 a week.

Q. I hand you here a green paper, which is marked on the bottom Sheet 27, and ask you to look at it and see if that will refresh your recollection?

A. That's right; I said $25.00.

Q. Will you state whether that is apparently a correct copy of the sheet you signed when you went to work for the company?

A. Yes, sir; it must be; my name is there; I don't think I signed my name if it was not; as I say though; all these forms I don't recall.

Q. I call attention to the fact that that is dated April 14th, 1943?

A. That's right; I went there April 9th, 1943.

Q. It must have been some five days after that that you signed this form?

A. Apparently so.

Q. You stated in January 1946 you got an increase?

A. I think so.

Q. Who told you you would get that increase before you got it?

A. Who told me?

Q. Who told you you were being raised?

A. Is that necessary?

Q. If you remember it, who told you?

A. Mr. Cox.

Q. Mr. R. E. Cox?

A. Yes; the bookkeeper.

Q. At the time he told you you were getting that raise, did he tell you how much you would get?

A. No; he just said I was going to get a raise; when it came through I was pleased with it.

Q. How much was that raise?

A. When I went there it was $25.00 and it has gone up to $27.45.

Q. Per week?

A. Yes, sir; on a weekly basis.

Q. Did Mr. R. E. Cox tell you anything else except that?

A. No; he just said I was going to get a raise; when I got it I saw it came through.

Q. Had you asked for a raise?

A. No, sir; I had not.

Q. Has anyone employed by the company or anyone not employed by the company ever indicated to you that you were building up an accumulation of hours and would be owing the company money if you worked less than your scheduled hours?

A. I have a certain amount of hours to work and if overtime it would have been all right with me; I would not have raised objection to that; I signed a form for so many hours; if they wanted me to work over those hours I was perfectly willing to do so and not charge them a penny for it.

Q. Maybe I can make myself a little clearer. Did anyone ever tell you or do you know that the company is keeping a record of the hours which you work, which are less than your scheduled hours?

A. Less than my scheduled hours?

Q. Here is what it says: 40 hours at .40¢, 15 hours at .60¢; 40 plus 15 would be 55 hours?

A. That's right.

Q. Has anyone told you if you worked less than 55 hours a week you would be building up an accumulation of hours with the company?

A. No.

Q. No one has ever told you that?

A. No; I am not a person to delve into too many things.

Q. Have you had about the same schedule of hours, since you have been there or has there been some change?

A. When the raise came there was no change.

Q. Before the raise what time did you come to work in the morning?

A. 8:20.

Q. What time did you leave at night?

A. 6:00 o'clock; if necessary to stay a little overtime I did not object, but it did not occur very often that we had to stay after 6:00 o'clock; we were off an hour for dinner.

Q. What is the Saturday schedule?

A. 8:20 to 1:00.

Q. And on week days you have an hour off for dinner?

A. Yes, sir.

Q. You worked 8 hours and 40 minutes during the week?

A. Yes, sir.

Q. And on Saturdays you worked 4 hours and 40 minutes?

A. Yes, sir.

Q. That would be about 49 hours?

A. I guess so.

Q. I am still speaking about the time before you were raised, did you know whether the company was charging you on the books with the difference between 49 and 55 hours?

A. I cannot tell you anything about that; I did not ask any questions about it.

Q. Did you or not know that the company was charging you?

A. For what?

Q. If you worked 49 hours and 55 was the schedule, if the company was charging you for the difference?

A. Did I know it?

Q. Did you know it?

A. Of course; I must have known it.

Q. How did you find it out?

A. I could not tell you.

Q. How did you know it?

A. Only one way to know it and that was to figure it out.

Q. Did you ever figure it out?

A. I just did not think about it.

Q. As far as you knew, you were making your full salary each week?

A. Yes, sir.

Q. When you got your raise about January this year did you have a change in the number of hours that you were set up for? Did they make any change from these 55 hours that you were set up for in your schedule of hours?

A. I don't think they did; it was 40 hours at 45c and 14 hours at .67-1 2c; that is when I got the raise.

Q. I understand then that after the raise your contract hours were 40 hours at .40c and 14 hours at .67-1 2c?

A. Yes, sir.

Q. Since that new schedule of contract was put into effect has there been any change in the actual hours you worked?

A. No.

Q. You still worked the same hours?

A. No; it seems to me that has always been the standard; 40 and 14—54 hours.

Q. You testified a little earlier that was an accurate copy of the original sheet you signed.

A. Yes, sir; 40 and 15.

Q. When they gave you an increase the contract was cut from 55 to 54 or cut an hour?

A. Yes, sir; I guess so.

Q. At present, although the contract hours are 54, your actual hours are 49, are they not?

A. Yes, sir, according to that it must be.

Mr. Shelton:

I offer in evidence this sheet marked on the bottom Sheet 27 as Plaintiff's Exhibit 4 for identification.

Cross Examination.

By Mr. Kurz:

Q. Miss Proctor, I hand you this green sheet, to which Mr. Shelton has referred: is that your signature on that sheet?

A. Yes, sir; that is mine.

Q. Do you know Mr. Humpidge's signature?

A. Mr. Humpidge writes a big hand.

Q. Is that Mr. Humpidge's signature?

A. It looks like it; yes, sir; that's it.

Q. Do you know Mr. Cox's signature?

A. Yes, sir.

Q. Is that Mr. Cox's signature?

A. Yes, sir.

Q. How much bonus do you get per month?

A. $19.73 I believe it is.

(The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

488 HERMAN J. SANDERS, witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Shelton:

Q. Will you please state your full name?

A. Herman J. Sanders.

Q. By whom are you now employed?

A. Atlantic Paper Company.

Q. Is that a part of the Jacksonville Paper Company?

A. That is what they tell me.

Q. How long have you been employed by the company?

A. I think from the 15th of August, 1944.

Q. Since you started to work have you been employed there continuously?

A. That's right.

Q. When you first went to work for the company what was your job?

A. Shipping clerk, just as it is now.

Q. Do I understand you have been regularly employed as shipping clerk since you went there?

A. That's right.

Q. In connection with that job, state whether or not you received goods coming into the warehouse of the Atlantic Paper Company?

A. I have received some; not much; I have not the time.

Q. State whether or not you kept records of such goods?

A. No.

Q. Who keeps the records on incoming goods, checking the goods coming in to see that the goods actually received agree with the invoice or other papers?

A. Most of the time Mr. Cox; once in a while I take them.

Q. Mr. Amos Cox?

A. That's right.

Q. Occasionally you do it?

A. Yes, sir.

Q. What do you do?

A. I see that it gets off. The fine paper.

Q. Do you do part or all the work of getting up the fine paper?

A. I do the most of it; if I need help I use a helper.

Q. What does that work consist of?

A. They bring me an order and I get the goods; if it has to be cut I cut it; I wrap it.

Q. In connection with the shipments out of that fine paper to the customers of the company, do you make any record of what you ship?

A. They put down on a sheet what they want; I check it off.

Q. Do I understand you, as you get up each item you put a check mark opposite that item?

A. That's right.

Q. After you have that gotten up, state whether some paper has to be put in other containers?

A. That's right.

Q. Who does that?

A. I pack all the fine paper.

Q. That fine paper is some of it shipped by truck?

A. Yes, sir.

Q. And some by express?

A. Yes, sir.

Q. And some by parcel post?

A. That's right.

Q. And some by freight car?

A. That goes to the depot.

Q. Does any of it go by water?

A. Not that I know of.

Q. No South Carolina shipments by boat?

A. No.

Q. Do I understand that all outgoing shipments of fine peper move by rail, truck, express or parcel post?

A. Yes, sir.

Q. Is it necessary to prepare shipping documents for shipping?

A. That's right.

Q. Who prepares those documents?

A. They do that in the office.

Q. You don't have to do that?

A. No; at one time they wanted me, and I told them I had more than I could do, and so they took it over.

Q. When something is shipped out by express you have to put the name of the consignee on the package?

A. Yes, sir.

Q. Who does that?

A. I label it.

Q. When by truck also?

A. Yes, sir.

Q. You do that?

A. Yes, sir.

Q. When by parcel post the address has to be put on it?

A. Yes, sir.

Q. You do that?

A. Yes, sir.

Q. On railroad shipments you have to put the consignee's name and address on it?

A. Yes, sir.

Q. Do you do that?

A. Yes, sir.

Q. You testified, I believe, Mr. Sanders, that you have duties sometimes in connection with receiving shipments, but that your regular duties are in connection with shipping fine paper out?

A. That's right.

Q. Can you estimate what proportion of your time is spent in those two jobs, receiving incoming goods and addressing outgoing goods?

A. It's all in the day's work; I have but a few minutes left.

Q. All of your time is spent in those two jobs?

A. That's right.

Q. Have you any authority to hire or fire employees?

A. No.

Q. Has anybody over you ever told you you had authority to recommend the hiring or firing of employees?

A. No.

Q. How much do you receive now a week?

A. $30.10.

Q. Do you also get a bonus?

A. That's right.

Q. How often is that bonus paid?

A. Once a month.

Q. Do you know how much it runs now?

A. I cannot tell you exactly; $16.00 and something.

Q. $16.00 and something a month?

A. That's right.

Q. Mr. Sanders, when you first came to work for the company, do you remember signing two papers?

A. I do.

Q. Would you look at these two blanks (one is a green one) and state whether it is a copy of what you signed when you started working for the company; I am not indicating that is your actual handwriting?

A. That's right.

Q. As to this green sheet: do you remember signing a green paper like that?

A. I signed one.

Q. Do you remember signing a paper like this white paper?

A. That's right.

Mr. Shelton:

These papers will be offered in evidence; the white one as Plaintiff's Exhibit 5 (a) for identification and the green one as Plaintiff's Exhibit 5 (b) for identification.

Q. When you went to work for the company who hired you?

A. Mr. Crawford.

Q. Do you remember his full name?

A. No; I cannot tell you his full name.

Q. What was his job with the company?

A. He was manager of the fine paper.

Q. He hired you?

A. That's right.

Q. Is Mr. Crawford still employed down there now?

A. Yes, sir.

Q. On this green sheet, which is Plaintiff's Exhibit 5 (b) for identification, with Mr. Humpidge's name: do you recall whether or not he signed that in your presence?

A. No.

Q. You don't recall?

A. No.

Q. When Mr. Crawford hired you, how did he tell you you would be paid?

A. He told me I would receive $30.00 per week straight.

Q. Did he tell you whether or not you would receive any additional wages for overtime?

A. That's right.

Q. What did he tell you?

A. Time and a half.

Q. Time and a half for overtime?

A. That's right.

Q. Did he tell you when that overtime would start, after how many hours?

A. He did too, but I don't remember; I am satisfied he did.

Q. Did you ever work over hours that you got any wages beyond your salary, $30.10?

A. No, sir.

Q. Are you still receiving $30.10 or an increase?

A. I receive my bonus.

Q. Not counting the bonus; do you still get $30.10 a week?

A. Old age and such are taken out.

A.[Q.] I am talking about gross wages now?

A. Yes, sir.

Q. You have never worked enough hours that you got beyond $30.10?

A. No.

Q. When you started to work did Mr. Crawford tell you what hours you would work?

A. Yes sir, from 8:00 to noon; one hour off at noon; and off at 6:00 for five days; the sixth day 8:00 to 1:00.

Q. 50 hours; 8:00 to 12:00, and 1:00 to 6:00, and 5 hours on Saturday; 50 hours?

A. Yes, sir.

Q. State whether or not you have pretty well tracked that schedule since with the company, whether more or less?

A. When times are slack, if I want to get off I can get off.

Q. You never worked over 50 hours a week?

A. No.

Q. Do you sign in and sign out each day and also for lunch?

A. Yes, sir; that's right.

Q. State whether or not an accurate record of your time is kept?

A. Yes, sir; the time sheet.

Q. It accurately states the hours you work?

A. Yes, sir.

Q. You never work over 50 hours?

A. That's right.

Q. Has anybody ever told you you were building up a liability to the company by working only 50 hours a week when your contract called for 60 hours?

A. They might have, but I never paid any mind.

Q. If anybody told you that you never paid it any mind?

A. No.

Q. All yours to keep?

A. Except what they took out.

Q. Aside from the deductions, do you consider you owe any part of your salary to the company?

Mr. Kurz:

I object to the question because it calls for a conclusion of the witness.

A. No; I feel like I earned it.

Q. When you worked 50 hours, did you know the company was setting up on its books a record showing you owed them 10 hours difference between 50 and 60 contract hours?

A. No.

Q. Had anyone ever given you any indication that you were building up such a liability with the company?

A. No.

Mr. Kurz:

I object to the question and move to strike the answer on the ground that it is vague and indefinite and calls for a conclusion of the witness.

Q. Do you remember when you started getting the monthly bonus?

A. No.

Q. State whether or not it would have been about June 1945?

A. Either June or July.

Q. 1945?

A. That's right.

(The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

AMOS PAUL COX, witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

495 Direct Examination.

By Mr. Shelton:

Q. State your full name, please?

A. Amos Paul Cox.

Q. By whom are you employed?

A. I am employed by the Atlantic Paper Company.

Q. Is that a part of the Jacksonville Paper Company?

A. Yes, sir; that is my understanding; I have always understood that.

Q. How long employed by the company?

A. I started there on the 28th of May, 1945.

Q. You have been employed there continuously since that time?

A. Yes, sir.

Q. Mr. Cox will you state whether or not an accurate record is kept of the hours you work for the company?

A. Yes, sir; I sign in and I sign out, on the way out to lunch and also at closing time.

Q. And on Saturday you sign in in the morning and out in the afternoon?

A. That's right.

Q. Will you state what your duties now are with the company?

A. Shipping clerk.

Q. How long have you been employed as a shipping clerk?

A. Since May 28th, 1945.

Q. In other words, you have been shipping clerk the whole time you have been with the company?

A. Yes, sir.

Q. When goods are received by the Atlantic Paper Company at its warehouse, who receives and checks in those goods?

A. As a rule I do; if I am too busy then somebody else does; but if not too busy I do.

Q. As best you can estimate it, what part of your time working for the company is spent in connection with receiving incoming goods and keeping records on incoming goods?

A. There are days when we have carloads of stuff coming in; then my time is spent 30 to 40% in checking the goods received; on other days I spend very little time checking in; on the days there is no car, I mean.

Q. In addition to incoming rail shipments, do you also receive incoming shipments by truck?

A. Yes, sir; that does not take up so much time; it takes something like 5 to 10 minutes at a time to check a truck.

Q. Do you also have some shipments coming in by express?

A. There may be some; a very few.

Q. I am going to ask you to consider all incoming shipments, rail, truck and express, and try to average

over a representative period like a month, and say what part of your time is spent in receiving such shipments?

A. This is going to be hard; I would say in a month's time maybe 20%.

Q. Have you any duties with respect to the shipment of coarse paper to company customers?

A. I am the coarse paper shipping clerk.

Q. Who at the warehouse gets up coarse paper orders which go to the company customers?

A. I do that often.

Q. Mr. Cox, are you familiar with the duties of Mr. Sanders in the fine paper department?

A. I know who you are talking about; I have never heard anyone say about what he was there.

Q. What I want to find out is whether your duties with reference to coarse paper correspond with Mr. Sanders' with reference to fine paper?

A. Well, I think they are the same; I could not swear to that, but that is my understanding.

Q. In connection with shipments out of coarse paper, is it necessary to get up bills of lading, express receipts, and other documents?

A. No, sir, I don't get up bills of lading; I make a list of what is on the order, but on express shipments I do the writing.

Q. Is that called an express receipt?

A. It is a receipt.

Q. You get up the express receipts?

A. Yes, sir.

Q. You prepare them?

A. Yes, sir.

Q. In connection with rail shipments and also shipments by truck; do they have to be labeled with the name of the consignee?

A. Yes, sir.

Q. Who does that labeling?

A. I do or the man working with me.

Q. A part of that you do yourself?

A. Yes, sir; part of that I do myself.

Q. Do you have any other duties in connection with outgoing shipments. For example, do you wrap the outgoing coarse paper shipments?

A. Various parts of them have to be wrapped; a small percentage.

Q. Do you cut the paper when shipments are made?

A. We have a paper cutter.

Q. You use the cutter?

A. Yes, sir; the large cutter is in the front I don't use; there is a cutter on a roll like in a grocery store; that cutter I use.

Q. Why does that operation have to be performed before the paper goes out?

A. Some of it comes in in cases; that has either to be packaged or wrapped in paper.

Q. In addition to what you have already described in the wrapping of some of the outgoing shipments: do you pack them in boxes or wrap them?

A. Yes, sir.

Q. As to all the things you have spoken of with reference to outgoing shipments: what part of your time do you estimate is spent in handling outgoing shipments?

A. Let me get myself clear; do you mean city shipments?

Q. I mean everything that goes out of the warehouse that you handle?

A. Practically all of my time is spent in handling shipping; I work in the morning on city deliveries to be loaded on trucks; as soon as I get through with that I start to work on what we call the country orders.

Q. Mr. Cox, you have estimated some 20% of your time is spent in connection with the receipt of incoming shipments; I ask you whether practically all of your remaining time is spent in handling outgoing shipments?

A. Yes, sir; that's right.

Q. Do you ever take or help take inventories of the warehouse?

A. I have, but I have never done any actual writing on the inventory sheet.

Q. What part of the job did you do?

A. I just go along and check his count; we would both count; he had a pencil and pad, and I would check and verify his count.

Q. Are you paid a monthly bonus?

A. I will be.

Q. Are you now?

A. No, sir.

Q. You have been told when you would start getting that monthly bonus?

A. At the end of the year; the new year begins the 1st of June; I have never been told when I would get the actual payment; I don't know, but it is supposed to start the 1st of June.

Q. Who told you that?

A. Now, Mr. Humpidge told me I would get a bonus or a raise; I could call it what I pleased; he called it a bonus and then he called it a raise; he said "You can call it what you please"; now, how I am going to get it, per week or per month, I don't know; I never asked how it would come.

Q. Mr. Humpidge did not tell you how it would be paid?

A. He told me that it would be paid in twelve installments.

Q. Mr. Cox, have you ever hired or fired any employee while being employed by the company?

A. I have never hired anyone; I have never fired anyone; I caused one to be fired.

Q. How did you cause him to be fired?

A. I told Mr. Cox to fire him.

Q. That is Mr. R. E. Cox?

A. Mr. R. E. Cox, yes, sir.

Q. State whether or not that was the only occasion on which you recommended an employee to be fired?

A. That is the only one that I have flatly told that he must go; there are others I would not have minded and I might have expressed myself that way, but I never asked them to fire anybody else.

Q. State whether or not any full time employees work under your supervision?

A. I don't know how those fellows are worked.

Q. Whom do the colored boys consider their bosses?

A. Mr. Humpidge and Mr. Cox are the main ones; I am supposed to be in charge, but they consider Mr. Humpidge and Mr. Cox in charge; if I tell them to do anything they do it; as to whom they consider their actual boss, I don't believe they consider me so much.

Q. What part of your time do you spend telling those colored boys what to do?

A. After one is trained to understand the work, he is supposed to spend his time that way; he learns what he has to do. I don't have to spend but very little time on that.

Q. What do you spend most of your time doing?

A. Working around; getting something on an order or checking orders they have gotten up; showing how the bills of lading are to be made out.

Q. When you came to work, state whether or not you signed a green form of the type which is Plaintiff's Exhibit 5 (b) for identification; did you sign a form of that kind?

A. To tell you the truth, I didonot when I first started; I don't remember whether I did at any time; I received several papers, but I don't remember what color they were or just what was on them.

Q. Do you recall signing a paper like this sheet, 5 (a), a white sheet, Plaintiff's Exhibit 5 (a) for identification?

A. Yes, sir.

Q. You do remember signing that?

A. Yes, sir.

Q. But you don't remember signing the green sheet?

A. I signed one like the white one, but I don't remember the green one.

Q. Do you remember on this white sheet that you signed, how many hours it called for you to work and how much it called for you to be paid.

A. Yes, sir; .50¢ an hour for 40 hours and .75¢ an hour for 20 hours.

Q. In other words, a total of 60 hours?

A. Yes, sir.

Q. What was the pay shown on it?

A. $35.00 a week.

Q. Has that been your salary the whole time you have been there or have you had a raise?

A. No, I have not been raised.

Q. Have your working hours been about the same your whole time there?

A. Yes, sir.

Q. When do you come to work in the morning?

A. 8:00 o'clock.

Q. How much time off for dinner?

A. One hour.

Q. What time do you leave at night?

A. 6:00.

Q. What time do you quit on Saturday?

A. 1:00.

Q. That would make 50 hours a week?

A. Yes, sir.

Q. Who hired you when you came to work for the company?

A. When I went there and applied for employment I talked with Mr. Cox and I talked with Mr. Humpidge.

Q. Who do you consider actually hired you?

Mr. Kurz:

I object to that; it calls for a conclusion of the witness.

Q. When you were hired there what were you told about how you would be paid?

A. When Mr. Humpidge talked with me he said $35.00 a week.

Q. Did he tell you how many hours you would work?

A. He said 50 hours.

Q. Did he tell you anything about the 10 hours difference between the 50 hours he said you would work and the 60 hours you were set up with on this paper?

A. No, sir; he did not.

Q. Did you ever ask anybody about that?

A. When I signed this paper that was not the day I was employed; I don't remember how many weeks after, but it was weeks after; and that was the first I knew about 60 hours and 50 hours; I was talking with Mr. Cox then; he said .50¢ an hour for 40 hours and .75¢ an hour for 20 hours; he said, "If we pay you for 10 hours you don't work you are not going to kick" or words to that effect; I don't remember what his actual words were.

Q. Did Mr. R. E. Cox or anyone tell you you were building up a liability to the company by working less hours than the contract hours?

A. No, sir.

Q. Has anyone ever told you you were building up a debt to the company, that you owed the company some money?

A. No, sir.

Q. Do I understand you to state that nobody has ever told you you owed the company any hours or any money?

A. No, sir; I have never been told that.

Q. Do you know whether the company charges you on the books for 10 hours ~~difference between~~ the 50 and 60 hours?

A. No, sir; I don't; that is something I don't know about.

Q. You testified it was some time after you were hired before you signed this paper; do you know whether the paper was dated the day you signed it or dated back to the date you were hired?

A. I don't.

Q. You did not pay any attention to that?

A. No.

Cross Examination

By Mr. Kurz:

Q. Mr. Cox, when you estimated the amount of time in percentages that you spent in any particular work there, do you do so by reason of any record you kept?

A. No, sir; that was purely an estimate.

Q. Just a guess?

A. Just a guess.

Q. Did you have occasion at any time to pay attention as to how your time was apportioned?

A. No, sir.

Q. You said you spent all your time in handling incoming and outgoing shipments, I believe?

A. Yes, sir.

Q. Do you mean physical handling by taking the goods from the truck?

A. No, sir. I am supervising and assisting in handling; the main part of my work is of a supervisory nature, but I do actually take my hands and do a part of it.

Q. How many men working in the warehouse under your supervision?

A. There is one full time man and three truck drivers when they are not driving trucks.

Q. How often do you take inventory?

A. There was an inventory the 1st of last June; an inventory the 1st of December; and there will be one tomorrow.

Q. In other words, one every six months?

A. That's the way it has been so far; the June 1st inventory is when the year begins.

Q. Up to now, you have taken two inventories?

A. Two since I have been there.

Q. Who is responsible for the merchandise in the warehouse under your supervision; I mean who has to keep track of what comes in and goes out?

A. I do; there are times when stuff coming in one door and going out another door; I don't try to do two things at one time; if too busy somebody helps.

Q. You tell somebody to help?

A. Usually Mr. Humpidge does it; a good deal of work keeping up with it.

Re-Direct Examination.

By Mr. Shelton:

Q. Mr. Cox, there are quite a few jobs around that you do, keeping of records and addresses of one kind or another?

A. No, sir, I keep no paper records.

Q. The writing of addresses and things like that which call for writing?

A. I write on a ticket for the bill of lading to show the lady in the office what to write; she is not familiar with the terms used on the orders, and I write on the ticket showing what is to be written on the bill of lading.

Q. You address the package going on shipments of various kinds?

A. The labels are written in the office; I merely stick them on; it seldom happens but once in a long time they

will get loose; and I write one, but that is very seldom.

Q. You testified that sometimes when busy Mr. Humpidge will help you out?

A. Yes, sir; there is more work at times than one man can possibly take care of, and Mr. Humpidge takes charge or helps me out; I do one part and he the other.

Q. When he does that work along with you, you are working under his supervision?

A. Yes, sir.

Q. Any work to be done he will tell you what to do?

A. Yes, sir.

Q. Mr. Cox, when working together in that way, what work will you do and what work will Mr. Humpidge do?

A. Usually, I am unloading one truck and he will be doing something entirely different; and there are times when he loads a truck and I stand around picking up something.

Q. Who cleans up the warehouse?

A. One of the regular warehouse men.

Q. Do you ever help him clean up?

A. No, sir.

Q. You testified, I believe, that you understand your duties are quite similar to those of Mr. Sanders in fine paper?

A. I could not tell you about that stuff; I don't know; it is just from looking at his work, at what he does, I have decided it must be practically the same as mine; nobody has ever told me about his work, what he was supposed to do; I don't have anything to do with it.

Q. You have testified, I believe, that there are three truck drivers who work in the warehouse in addition to the one full time employee?

A. Yes, sir; when they come in off the truck they do work in the warehouse.

Q. Do these truck drivers handle fine paper as well as coarse paper?

A. One of them does.

Q. And the others handle coarse paper?

A. At times all three handle coarse paper, but as a regular thing they do work in coarse paper.

Q. The other is the fine paper driver?

A. He drives the fine paper truck.

Q. Do I understand that those three drivers work back and forth between the coarse and fine paper as the necessity arises?

A. When those men are working in the warehouse and the fine paper department has need for an extra man he would call for a man, and I would let him have him, but if Mr. Sanders asks for him to handle a certain package I always send him; when he is done the man comes back to the coarse paper department.

Q. Those three truck drivers: what part of their total working time do they spend in the warehouse?

A. It is hard to estimate that; it would be more or less of a guess.

Q. It would be more or less than a half?

A. Less than a half.

Q. More or less than a quarter?

A. I think less than a quarter.

(The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

R. E. COX, witness on behalf of the Defendants, having been first duly sworn, testified as follows:

507 Direct Examination.

By Mr. Kurz:

Q. State your full name, please?

A. R. E. Cox.

Q. Where are you employed?

A. By the Atlantic Paper Company.

Q. What is your position?

A. Cashier.

Q. Are you in charge of the office at Savannah of the Atlantic Paper Company?

A. Yes, sir.

Q. Do you know Miss Margaret Oetgen, now, Mrs. Burke?

A. Yes, sir.

Q. Was she employed in the Atlantic Paper Company office here?

A. Yes, sir.

Q. Do you remember the occasion when she was re-employed after she had left the company for some months?

A. Yes, sir.

Q. At that time did Miss Oetgen sign an application for employment?

A. Yes, sir.

Q. Was that a form like this white form marked Plaintiff's Exhibit 3 (a) for identification?

A. She signed a form just like that.

Q. Did she also sign a form like Plaintiff's Exhibit 3 (b) for identification; this green form?

A. Yes, sir.

Q. Miss Oetgen had been previously employed by the company; had she not?

A. Yes, sir.

Q. While previously employed did she keep a record of hours worked?

A. No.

Q. She did not?

A. No; that is to the best of my recollection; we had so many I am not positive; I don't think she did.

Q. Did she sign in and out every day?

A. Oh, yes.

Q. She did do that while previously employed all the time?

A. That's correct.

Q. When she was re-employed did you tell her anything at all about signing this time sheet in and out?

A. No; she had been with us so long I did not feel like I had to tell her anything; she knew.

Q. At the time she was re-employed where were you spending most of your working hours?

A. In the warehouse.

Q. Why was that?

A. On account of shortage of help.

Q. When did you first discover there was no record of her actual daily hours?

A. In September 1944.

Q. Did you instruct her then as to whether or not she should keep those hours?

A. Yes, sir.

Q. Whose duty was it to keep those records from January 1944 to the time in September 1944 when you told her to start keeping a time sheet?

A. Do you mean signing the time sheet or being responsible for having it.

Q. Who was responsible?

A. Miss Oetgen was responsible for it.

Q. She was responsible for keeping the records during the time she was re-employed?

A. That's right.

Q. During that time did she make up the pay roll, including her own?

A. Yes, sir.

Q. Did that pay roll show the number of hours worked?.

A. Yes, sir.

Q. Did she figure out the dollars and cents; what did she do?

A. The pay roll figures are all made up in the home office; Miss Oetgen's duties were to total the various deductions for taxes and advances made and fill in the net balance to make up the pay roll.

Q. Those records you speak of as pay roll; that is a regular pay roll?

A. That's right.

Q. Regular employees?

A. Regular employees.

Q. Did that pay roll show the number of hours on which the pay was calculated?

A. Yes, sir.

Q. Did it show the number of hours for Miss Oetgen?

A. Yes, sir.

Cross Examination

By Mr. Downing:

Q. If she was not keeping a record of her hours between January and September 1944, how did those hours get on the pay roll?

A. They were put on originally when the pay roll was made up.

Q. Who put them on there?

A. The payroll was made up in Jacksonville.

Q. How were they put on if Miss Oetgen had not kept them?

A. They have the original papers.

Q. I show you Exhibit 3: what hours are shown there?

A. 40 hours at 50¢; 20 at 75¢.

Q. It does show 60?

A. It shows 40 and 20.

Q. During that period from January to September 1944 the pay roll made up in Jacksonville simply showed the contract hours?

A. That's right.

Q. And then in September you noticed she was not signing in and out on this sheet?

A. That's right.

Q. And you directed her to do that?

A. That's right.

Q. From then on what did the payroll show?

A. The same thing; 40 and 20.

Q. Did the pay roll also show the hours she turned in?

A. The pay roll is made up from a permanent sheet.

Q. 40 and 20 also shown as the hours she actually worked?

A. No.

Q. May I ask you this: aside from Miss Oetgen, and the pay roll made up in Jacksonville: did the pay roll show the contract hours or the actual hours on the daily time sheet?

A. The contract price.

Q. In all cases?

A. That's right.

Q. Are the daily time sheets sent each week to the Jacksonville office?

A. Yes, sir.

Q. And from these time sheets the pay roll is made up?

A. No.

Q. Suppose an employee was out for a whole week?

A. It would still come in.

Q. If the employee had a whole week off?

A. Yes, sir.

Q. Would you give it to the employee in that case?

A. If we intended to.

Q. Suppose you were not going to pay it?

A. We would indicate to Jacksonville that the money is credited against the pay roll for the next week.

Q. You save the check and give it to the employee the next week if there?

A. No; the pay roll check comes in a lump sum.

Q. You say Miss Oetgen herself was responsible for keeping this daily time sheet?

A. That's right.

Q. After she got that completed at the end of the week what did she do with it?

A. The original goes to the home office in Jacksonville and a copy kept in the office.

Q. Did you or Mr. Humpidge have any duties in connection with checking the daily time sheet before going to Jacksonville?

A. At that time my time was taken up in other ways.

Q. Did Mr. Humpidge have any duties in connection with checking this time sheet before it went to Jacksonville?

A. Yes, sir.

Q. Of course, the Jacksonville office got one every week?

A. Yes, sir.

Re-Direct Examination.

By Mr. Kurz:

Q. Mr. Cox, I hand you herewith a paper marked Time Sheet, Daily Time Sheet, dated September 5th, 1944, Branch Savannah, on which the name of Margaret Oetgen appears: is that the first time sheet made out after her re-employment?

A. No; that was the first one she signed after re-employment.

Q. This time sheet shows signatures in the morning out at noon and in again and out in the afternoon: do I understand she made out a daily time sheet before that?

A. Yes, sir.

Q. But her name did not appear on it?

A. Yes, sir; that is the first one she signed.

Q. How is that time sheet prepared?

A. It is prepared by each employee putting the time down themselves and signing their names themselves after the time.

Q. And this is the first one on which Miss Oetgen signed after her re-employment?

A. That is correct.

Mr. Kurz:

We offer this sheet in evidence as Defendants' Exhibit 1 for identification.

Q. Who fills in the name appearing at the left hand column of this time sheet?

A. That has been prepared by various employees, a list of employees' names, so we will keep them in order each day for convenience in handling at the end of the week; no particular person was given that job to do all the time; it does not mean anything.

Q. That is, the names that appear on the left hand column are not the personal signatures of the employees?

A. No.

Q. Look at this time sheet and see whether the other names there are filled in in the other columns?

A. Yes, sir; all are here; I am familiar with them all.

Q. Mr. Cox, I hand you herewith a form which is marked (1M-4-10-45-L), which shows the schedule of hours for which paid, time worked, and various other matters of information, and ask you whether such a record was kept at the Savannah Branch during the time Miss Oetgen was employed the second time?

A. It was kept on all employees.

Q. Whose duty was it to keep that record?

A. Miss Oetgen atended to that.

Q. How often was that made out?

A. Every week.

Q. What was done with those reports?

A. They were held in the office in Savannah until completed or the employee was separated from the job. If the page is full it goes to Jacksonville and if a party is separated from the job it goes to Jacksonville.

Q. Was one kept from Miss Oetgen?

A. From September 1944.

Q. It was not kept prior to September?

A. No.

Mr. Kurz:

We offer in evidence this sheet as Defendants' Exhibit 2 for identification.

Re-Cross Examination.

By Mr. Downing:

Q. Referring to Defendants' Exhibit 2 for identification: did you yourself have any duties in connection with that form during the period of Miss Oetgen's second employment?

A. No.

Q. Did Mr. Humpidge?

A. No.

Q. Neither of you had any duty to examine or check it at any time?

A. No.

Q. Miss Oetgen simply sent these in to Jacksonville?

A. That's correct.

Q. Were copies kept in Savannah?

A. Yes, sir.

Q. You have copies here?

A. Yes, sir.

Re-Direct Examination.

By Mr. Kurz:

Q. Mr. Cox, going back again to this conversation you testified about when you discovered that Miss Oetgen

was not keeping the daily time sheet; will you state, as nearly as you can, just what the conversation was; what you said and what she said as to the reason for not keeping it?

A. When I noticed she was not signing I asked her why; she told me she thought she was more or less taking my place and it was not necessary; at that time I told her it was very necessary that she sign it and to start right away.

Q. That was the first time you learned she had not been signing?

A. Yes.

Re-Cross Examination.

By Mr. Shelton:

Q. A while ago, on cross-examination, I asked you if you had any duty in connection with checking these accounts and I understood you to say you had not?

A. No. Although most of my time was spent in the warehouse I was supposed to be in charge of the operation of the office, handling various things, and no matter what it was I was to a certain extent responsible.

Q. You did not agree with her assumption that she had taken your place?

A. Naturally.

(The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

State of Georgia.
County of Chatham.

I, John Z. Ryan, a Notary Public in and for Chatham County, Georgia, duly commissioned and qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that on May 31st, 1946,

the aforementioned witnesses: Mrs. Margaret Oetgen Burke, Charlie Walker, Miss Mamie D. Proctor, Herman J. Sanders, Amos Paul Cox and R. E. Cox, who were of sound mind and body, were by me first carefully examined, cautioned, and duly sworn to testify to the truth, the whole truth, and nothing but the truth; that they thereupon testified as above set forth; that the depositions were taken down and were reduced to writing by me; that the reading and signing of said depositions by the witnesses was waived by the said witnesses and by the said parties by their counsel.

I do further certify that I am not related by blood or marriage nor am I an employee of said attorneys or counsel or of the aforementioned witnesses, nor am I financially interested in the transaction.

In Witness Whereof, I have hereunto set my hand and official seal this 4th day of June, 1946.

(Sgd.) JOHN Z. RYAN,
(Notary Seal) Notary Public, Chatham County, Georgia.

My Commission expires Oct. 10th, 1948.



PLAINTIFF'S EXHIBIT 1 FOR IDENTIFICATION.

John Z. Ryan.

Name M. Oetgen. 1941: Branch, Savannah, Ga.

	Week Ending 6-7	Week Ending 6-14	Week Ending 6-21	Week Ending 6-28	Week Ending 7-5
Scheduled hours for which paid	51 3/4	51 3/4	14.25	51 3/4	51.45
Time worked	49.35	8.55	.....	49.20	40.20
Prepaid Credit Hours	2.10	42.50	14.25	2.25	11.25
Prepaid hours Credit brd't forward	86.15	88.25	121.15	135.40	138.05
Accumulated prepaid hours	88.25	121.15	135.40	138.05	149.30
	7-12	7-19	7-26	8-3	8-9
Scheduled hours for which paid	51 3/4	51 3/4	51 3/4	51 3/4	51 3/4
Time worked	48.20	48.50	48.35	49.20	48.40
Prepaid Credit Hours	3.45	2.55	3.10	2.25	3.05
Prepaid hours Credit bro't forward	149.30	153.15	156.10	159.20	161.45
Accumulated prepaid hours	153.15	156.10	159.20	161.45	164.50
	8-16	8-23	8-30	9-6	9-13
Scheduled hours for which paid	51 3/4	51 3/4	51 3/4	51 3/4	51 3/4
Time worked	49 1/2	55 3/4	48 1/4	40.40	50.05
Prepaid Credit Hours	2 1/4	(4)	3 1/2	11.05	1.40
Prepaid hours Credit bro't forward	164.50	167.15	163 1/4	166.45	177.50
Accumulated prepaid hours	167.15	163.15	166 3/4	177.50	179.30

	Week Ending 9-22	Week Ending 9-27	Week Ending 10-4	Week Ending 10-11	Week Ending 10-18
Scheduled hours for which paid	51 ¾	51 ¾	56 ½	56 ½	56 ½
Time worked	50.50	50.50	48.50	49.35	48 ½
Prepaid Credit Hours	.55	.55	7.40	6.55	8
Prepaid hours Credit bro't forward	179.30	180.25	181.20	189.	195.55
Accumulated Credit prepaid hours	180.25	181.20	189.	195.55	203. 5
	10-25	11-1	11-8	11-15	11-22
Scheduled hours for which paid	56 ½	56 ½	56 ½	56 ½	56 ½
Time worked	48.50	39.35	48.35	48.12	49.50
Prepaid Credit Hours	7.40	6.55	7.55	8.	6.40
Prepaid hours Credit bro't forward	203.55	211.35	218.30	226.25	234.25
Accumulated prepaid hours	211.35	218.30	226.25	234.25	241.05
	11-29	12-6	12-13	12-20	12-27
Scheduled hours for which paid	56 ½	56 ½	56 ½	56-½	56 ½
Time worked	41.35	52.25	44.25	49 ¼	38.05
Prepaid Credit Hours	14.55	4.05	12.05	7 ¼	18.25
Prepaid hours Credit bro't forward	241.05	256.	260.05	272.10	229.25
Accumulated prepaid hours	256.	260.05	272.10	229.25	293.50

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P 3.

(1M-4-10-45-L)

PLAINTIFFS' EXHIBIT 2 FOR IDENTIFICATION.

John Z. Ryan.

Name M. Oetgen. Item 2. Branch Savannah.

	Week Ending 1-2-43	Week Ending 1-9	Week Ending 1-16	Week Ending 1-23	Week Ending 1-30
Scheduled hours for which paid	60.	60.	60.	60.	60.
Time worked	39.15	48.05	47.10	48.15	47.
Prepaid Hours	20.45	11.55	12.50	11.45	13.
Prepaid Hours bro't forward	822.15	843.40	855.35	868.25	880.10
Accumulated prepaid hours	843.40	855.35	868.25	880.10	893.10

	2-6	2-13	2-20	2-27	3-2
Scheduled hours for which paid	60.	60.	60.	60.	60.
Time worked	48.15	53.45	48.15	47.45	46.20
Prepaid Hours	11.45	6.15	11.45	12.15	13.40
Prepaid Hours bro't forward	893.10	904.55	911.10	922.55	935.10
Accumulated prepaid hours	904.55	911.10	922.55	935.10	948.50

	3-13	3-20-43	
Scheduled hours for which paid	60.	8.30	
Time worked	47.	8.30	
Prepaid Hours	13	0.	Resigned
Prepaid Hours bro't forward	948.50	961.50	
Accumulated prepaid hours	961.50	961.50	

August 1940.	Week Ending 8-24-40	Week Ending 8-31-40	Week Ending 9-7	Week Ending 9-14	Week Ending 9-21	
Scheduled hours for which paid.....	49 ½	49 ½	49.30	49.30	49.30	
Time worked	49.	48 ¾	46.05	44.50	51.	
Prepaid Credit Hours	.30	.45	3.25	(.20)	(1.30)	
Prepaid hours Credit bro't forward..	1.10	1.40	2.25	5.50	5.30	
Accumulated Credit prepaid hours...	1.40	2.25	5.50	5.30	4.	
	9-28	10-5	10-12	10-19	10.26	
Scheduled hours for which paid.....	49.30	49.30	49.30	49.30	49.30	Note
Time worked	49.20	54.10	50.40	54.10	50.45	Earning
Prepaid Credit Hours	.10	(4.40)	(1.10)	(4.40)	(1.15)	Record
Prepaid hours Credit bro't forward..	4.	4.10	(.30)	(1.40)	(6.20)	Shows
Accumulated prepaid hours.....	4.10	(.30)	(1.40)	(6.20)	(7.35)	379 Pd. for Extra Labor
	11-2	11-9	11-16	11-23	11-30	
Scheduled hours for which paid.....	49.30	49.30	49.30	49.30	49.30	49-30
Time worked	48.20	46.40	48.20	40.15	55.25	49
Prepaid Credit Hours	1.10	2.50	1.10	9.15	(5.55)	30
Prepaid hours Credit bro't forward..	....	1.10	3.60	5.10	14.25	8 30
Accumulated prepaid hours.....	1.10	3.60	5.10	14.25	8.30	9

Sheet 14. P. 2 J. Z. R.

(1M-1-10-45-L)

Note overtime Paid 11-26.

PLAINTIFF'S EXHIBIT 3 (a) FOR IDENTIFICATION.
John Z. Ryan.

Branch Savannah.
Date 1-19-44.

I understand that I am employed to work 60 hours. That I will be paid for 40 hours at 50 and 20 hours at 75. Total 50 hours for $35.00.

That I am to sign Time Sheet filling in actual time in and out—morning, noon and night.

My home address is 22 W. Taylor St., Savannah, Ga., and I will notify my Employer of any change in address.

(Signed) MARGARET OETGEN.
(Full Name)

Dated 1-19-44.

(2M-11-23-46-L.) P 3-A, J. Z. R.

PLAINTIFF'S EXHIBIT 3 (b) FOR IDENTIFICATION.
John Z. Ryan.

Employment Notice.

Branch Savannah.
Date 1-19-44.

Name Margaret Oetgen. Social Security No. 255-05-7175.

Starting Date 1-19-44. Rate of pay..... per week.

Rate of pay per hr. $..... 40 hrs. at .50, 20 hrs. at .75

Total scheduled hours 60. Total pay $35.00.

Truck Drivers under ICC Regulations .....hrs. at.....
Total .....

Drawing Acc't: Salary ..... Expense ..... Total .....

Position Bookkeeper. Race White.

Date of birth 8-17-08. Age 35.

Male ..... Female X. Married ..... Single X.

Position application herewith X, will follow .....

Bond Application herewith X, will follow .....

Withholding Exemption Certificate attached X.

Group Insurance application herewith X will follow X. Declined X.

Group Insurance card herewith X will follow X.

Truck Drivers & Warehouse Employees: Physical examination report herewith ..... will follow .....

Additional help—Yes.... NoX, Replacing A. T. S. Wright.

Home address 22 West Taylor St., Sav'h, Ga.

Employee's signature MARGARET OETGEN.

H. C. HUMPIDGE, Manager R. COX. Cashier.

(3M-2 7 44-L.) P. 3-b, J. Z. R.

PLAINTIFF'S EXHIBIT 4 FOR IDENTIFICATION.

John Z. Ryan.

Employment Notice.

Branch Savannah.

Date 4-14-43.

Name Mamie D. Proctor. Social Security No. 260-09-9936.

Starting Date 4-19-43. Rate of pay, 25.00 per week.

Rate of pay per hr. $..... 40 hrs. at 40, 15 hrs. at .60.

Total scheduled hours 55. Total pay 25.00.

Truck Drivers under ICC Regulations .....hrs. at.....
Total .....

Drawing Acc't: Salary ..... Expense ..... Total .....

Position Stenographer. Race White.

Date of birth 1-1-1885. Age 58.

Male ..... Female X. Married ..... Single X.

Position application herewith X, will follow .....

Bond Application herewith X, will follow .....

Withholding Exemption Certificate attached .....

Group Insurance application herewith .... will follow ....
Declined Past age limit.

Group Insurance card herewith ..... will follow .....

Truck Drivers & Warehouse Employees: Physical examination report herewith ..... will follow .....

Additional help—Yes..... No X. Replacing L. Norikis.

Home address 14 W. Hull St., Savannah, Ga.

Employee's signature MAMIE D. PROCTOR.

H. L. HUMPIDGE, Manager. R. COX, Cashier.

(3M-2/7/44/-L.) P. 4 J. Z. R.

DEFENDANT'S EXHIBIT 1 FOR IDENTIFICATION.
John Z. Ryan.

Daily Time Sheet.

Branch Savannah.

Name	In A. M.	Signature	Out Noon	Signature	In Noon	Signature	Out P. M.	Signature	In	Out
M. D. Proctor	8.10	M. Proctor	12.00	M. Proctor	1.00	M. Proctor	6.00	M. Proctor	....	....
V. F. Jake	8.20	V. Jake	2.00	V. Jake	3.00	V. Jake	6.05	V. Jake	....	....
H. J. Sander	8.00	H. J. Sanders	12.30	H. J. Sanders	1.30	H. J. Sanders	6.00	H. J. Sanders	....	....
C. Walker	8.00	C. Walker	2.30	C. Walker	3.30	C. Walker	6.00	C. Walker	....	....
E. Gibson	8.00	E. Gibson	2.00	E. Gibson	3.00	E. Gibson	6.00	E. Gibson	....	....
S. W. Holloway	8.00	S. W. Holloway	3.00	S. W. Holloway	2.00	S. W. Holloway	6.00	S. W. Holloway	....	....
Jas. Eady	8.20	Jas. Eady	12.00	Jas. Eady	1.00	Jas. Eady	6.00	Jas. Eady	....	....
Margaret Oetgen	8.20	M. Oetgen	1.00	M. Oetgen	2.00	M. Oetgen	6.00	M. Oetgen	....	....
Charlotte Santos	....	C. M. Santos	2.00	C. M. Santos	3.00	C. M. Santos	6.00	C. M. Santos	....	....

Approved ....., Manager Correct .....Cashier .....

471

DEFENDANT'S EXHIBIT 1 FOR IDENTIFICATION.
John Z. Ryan.

Daily Time Sheet.

Date 9-5-44.

In A. M.	Signature	Out Noon	Signature	In Noon	Signature	Out P. M.	Signature	In	Out	After Hours Signature	Total
8.10	M. Proctor	12.00	M. Proctor	1.00	M. Proctor	6.00	M. Proctor	....	....	.....	8.50
8.20	V. Jake	2.00	V. Jake	3.00	V. Jake	6.05	V. Jake	....	....	.....	8.45
8.00	H. J. Sanders	12.30	H. J. Sanders	1.30	H. J. Sanders	6.00	H. J. Sanders	....	....	.....	9.00
8.00	C. Walker	2.30	C. Walker	3.30	C. Walker	6.00	C. Walker	....	....	.....	9.00
8.00	E. Gibson	2.00	E. Gibson	3.00	E. Gibson	6.00	E. Gibson	....	....	.....	9.00
8.00	S. W. Holloway	3.00	S. W. Holloway	2.00	S. W. Holloway	6.00	S. W. Holloway	....	....	.....	9.00
8.20	Jas. Eady	12.00	Jas. Eady	1.00	Jas. Eady	6.00	Jas. Eady	....	....	.....	9.00
8.20	M. Oetgen	1.00	M. Oetgen	2.00	M. Oetgen	6.00	M. Oetgen	....	....	.....	8.40
....	C. M. Santos	2.00	C. M. Santos	3.00	C. M. Santos	6.00	C. M. Santos	....	....	.....	8.40

Approved ....., Manager Correct .....Cashier .....

DEFENDANT'S EXHIBIT 2 FOR IDENTIFICATION.

Name ..... Branch

	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					
Scheduled hours for which paid					
Time worked					
Prepaid Hours					
Prepaid Hours bro't forward					
Accumulated prepaid hours					

(1-M-4-10-45-L)

D-2 J. Z. R.

Branch Savannah, Ga.
Date 8-15-44.

I understand that I am employed to work 60 hours. That I will be paid for 40 hours at 43¢ and 20 hours at 64½. Total 60 hours for $30.10.

That I am to sign Time Sheet filling in actual time in and out—morning, noon and night.

My home address is Egypt, Ga., and I will notify my Employer of any change in address.

(Signed) H. J. SANDERS.
(Full Name)

Dated 8-15-44.

P. 5-A J. Z. R.

(2M-11-23-46-L.)

Employment Notice.

Branch Savannah, Ga. F P
Date .....

Name H. J. Sanders. Social Security No. 261-09-2828.

Starting Date 8-7-44. Rate of pay $30.10 per week.

Rate of pay per hr. $ 40¢ 40 hrs. at ..... hrs. at .....

Total scheduled hours 60. Total pay 30.10.

Truck Drivers under ICC Regulations ..... hrs. at ..... Total .....

Drawing Acc't: Salary ..... Expense ..... Total .....

Position Fine Paper Shipping Clerk. Race White.

Date of birth 3-23-1903. Age 41.

Male X, Female ....., Married X. Single .....

Position application herewith X, will follow .....

Bond Application herewith X, will follow .....

Withholding Exemption Certificate attached .....

Group Insurance application herewith X will follow .....
Declined .....

Group Insurance card herewith X will follow .....

Truck Drivers & Warehouse Employees: Physical examination report herewith ..... will follow .....

Additional help—Yes ..... No. X. Replacing S. C. James.

Home address Egypt, Ga.

Employee's signature H. J. SANDERS.

H. L. HUMPIDGE, Manager. COX, Cashier.

(3M-2/7/44/-L.)

P. 5-b J. Z. R.

526 Filed Jun. 18, 1946, Jacksonville, Fla.

(Title Omitted.)

Depositions for Plaintiff taken at Tampa, Florida, in the Hillsborough County Court House, on Tuesday, June 12th, 1946, beginning at 9 o'clock A. M.

* * * * * *

I, James G. Nesbit, a Notary Public of the State of Florida at Large, and an officer authorized by law to administer oaths, do certify that pursuant to the stipulation of the above parties by their counsel dated May 16, 1946, and filed on May ..., 1946, I did on June 12, 1946, at 9 o'clock A. M., in the Circuit Court Room, Hillsborough County, Court House, Tampa, Florida, proceed to take the depositions of Ernest Howell Atkins, J. R. Williford, Julian K. Davis, R. E. Bryant, Mario G. Llano, James Stewrat, Sr., Virginia S. Imel and Mrs. Hattie Wotler Frick, who, after being by me first duly sworn, testified as hereinafter set forth, said testimony being transcribed and reduced to writing under my supervision, pursuant to said stipulation.

There were present George A. Downing and James H. Shelton, attorneys for plaintiff, and Louis Kurz, attorney for defendant.

529 PROCEEDINGS

Thereupon, ERNEST HOWELL ATKINS, a witness for the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:

Q. Please state your full name.

A. Ernest Howell Atkins.

Q. Mr. Atkins, by whom are you employed now?

A. Graham Jones Paper Company.

Q. Were you ever employed by the Tampa Paper Company?

A. I was.

Q. Over what period of time?

A. Oh, from 1934 until ast November 1945.

Q. You left in November 1945?

A. That's right.

Q. What was your position with the Tampa Paper Company?

A. Manager of the fine paper department.

Q. Did we take your deposition approximately five years ago when the Jacksonville Paper Company's case was being prepared for trial?

A. You did.

Q. Up until the time you left there had their method of doing business changed any in the Tampa Paper Company?

Mr. Kurz:

Objection to that question on the ground it is too vague and indefinite.

Q. I will put it this way. To what extent had the method of doing business by the Tampa Paper Company changed up until the time you left there?

Mr. Kurz:

Objection to that question on the ground it doesn't deal with any specific matter and is too broad.

Q. Can you answer that?

A. I don't know what you mean by it.

Q. All right, we will get down to specifics matters then if you can't answer the general one. Were you doing business in general with the same kind of customers, the same type of customers?

A. Yes, we were.

Q. Were you taking the same kinds of orders from them for the same kind of goods?

A. We were.

Q. Were you carrying in stock in general the same lines of merchandise that you did when you testified before?

A. We were.

Q. Did you continue to accept from customers and order for them certain types of goods which you did not regularly carry in stock?

A. Sure. I might put it this way, that customers would give us larger orders than we had in stock, see, and we would have to reorder.

Q. Have to what?

A. Have to reorder and get larger quantities from the mill.

Q. In other words, during the war years was there or not a scarcity of many lines of goods?

A. Yes, sir.

Q. Did that continue to be the case until you left there?

A. Yes, sir.

Q. As I understood your testimony your customers would frequently order more goods than you had in stock?

A. Sometimes.

Q. You will have to say yes or no, so the reporter can catch your answer.

A. All right, yes.

Q. When you received from customers orders for more goods than you had in stock, what did you do to fill them?

A. We would order them from the mill, send the orders through our Jacksonville office.

Q. Did you continue until you left there to take orders from customers for goods to be special printed or otherwise marked for customers?

A. Yes, sir, we did.

Q. Let's stop at that point a moment. On that point will you state the name of any customers you recall for whom you ordered such types of goods?

A. You mean that was printed?

Q. Printed or otherwise marked for the customer, or labeled with his label.

A. What I had in mind mostly was printed envelopes that they printed in Jacksonville and we discontinued a lot of that during the war, and frankly, right off hand. I couldn't answer that and give you any specific one, because we stopped, I imagine, three or four years before the end of the war.

Q. Sales books are not handled by the fine paper department, are they?

A. No, sir.

Q. Did your department handle mill lithograph envelopes?

A. No, not the lithographs. The printer normally lithographs them and we would fold them for him.

Q. Who is that?

A. I say sometimes the printer would lithograph their nvelopes and have us to fold them, but we very seldom d that. I don't recall a case here in Tampa.

Q. Was that printer a customer?

A. That's right. We didn't have any lithographing quipment.

Q. You mean the printer would lithograph them for s customer?

A. That's right.

Q. And have you fold them for him?

A. That's right.

Q. What types of customers were they?

A. Oh, just business concerns, hotels.

Q. Were any of them printed for Telephone or Tele-aph Companies or Railroads?

A. No sir.

Q. What about the Cigar Companies?

A. I don't recall.

Q. What about for newspapers?

A. No.

Q. Was the Florida Grower Press a customer of the e paper department?

A. They were.

Q. Did you order for it any specific types of goods, y special types of goods?

A. Not any special grades, no, sir.

Q. Did you order their stock and keep in storage for m certain types of goods for periodic delivery to them?

A. Well, as I recall it, it wasn't exactly for the Flor-a Grower. They bought a lot of paper from us down re.

Q. Did they buy any types of paper which were not ught by your trade generally?

A. No, sir.

Q. Did they buy any special sizes not bought by the de generally?

A. We carried a special size down there that fit a particular purpose that we sold any particular printer, and the Florida Grower bought a lot of that, but it wasn't just for the Florida Grower.

Q. Were there any other customers you bought particular sizes for?

A. Well, I might say this, that we would get jobs in there, orders that the customers would want us to cut on our cutting machines and we would use this particular size if it cut out best.

Q. Did you have to cut that particular paper for the Florida Grower?

A. No, I didn't cut it for them, they had a press large enough to cut it.

Q. Did you have any other customers who ordered it in that size uncut?

A. I can't answer that. It has been so long ago.

Q. Do you recall any customers who ordered that particular size?

A. I have one in mind in Bradenton that printed labels during the war that I have really forgotten, to tell the truth.

Q. Who was that customer?

A. The Bradenton Herald is what I had in mind.

Q. A newspaper customer?

A. No, they have got a printing shop.

Q. For what purpose did the Florida Grower Press use that particular size press?

A. They used it for general work.

Q. What did they print on it?

A. They printed various things on it.

Q. Such as what?

A. Booklets and labels.

Q. Did they get out a magazine?

A. Yes, but—

Q. (Interrupting.) Did they use that to print their magazine on?

A. I couldn't tell you that.

Q. But you know they printed booklets and labels?

A. That's right.

Q. For what types of customers, do you know?

A. No, I don't know their customers.

Q. Do you know whether they printed any labels for citrus packing concerns?

A. I couldn't answer that.

Q. Was the Peninsular Telephone Company a customer of the fine paper department?

A. They were.

Q. Until you left there?

A. Yes, sir.

Q. Did you or not supply the Telephone Company with a particular type of Atlantic Bond in rolls?

A. Yes, sir, we did.

Q. From what source was Atlantic Bond supplied to you?

A. The Eastern Corporation.

Q. Where is that located?

A. In Maine.

Q. Was that particular paper ordered for the Telephone Company?

A. That's right.

Q. Did you or not keep a supply in your warehouse for the purpose of filling orders of the Telephone Company or for the purpose of making periodic deliveries to it?

A. No, sir, it was all billed to them at one time.

Q. I understand that. I am asking you if you kept any of it in your warehouse?

A. Yes, sir, we did.

Q. For the purpose of filling orders or making periodic deliveries?

A. On account of their storage space they asked us to keep it for them.

Q. Was their order for that paper renewed from time to time?

A. Yes.

Q. And over what period of time would a renewal order spread?

A. Oh, once or twice a year.

Q. Under your understanding with the Peninsular Telephone Company, on what basis were deliveries to be made?

A. As they called for it, as I recall.

Q. How frequently did you place orders with Eastern to fill the orders of the Peninsular Telephone Company in this particular line?

A. Well, it is kind of hard to say. During the war we were on an allotment basis and we would have to just take so much tonnage at a time when we would get those orders.

Q. How frequently did you receive shipments of that item?

A. Once or twice a year, sometimes it would be once a year.

Q. A while ago I asked you how often you received orders from the Peninsular Telephone Company and you said once or twice a year, didn't you?

A. I don't get your question.

Q. A while ago I asked you how often you renewed those orders for that item. What is your answer to that?

A. Once a year.

Q. Once a year?

A. Yes, sir.

Q. Since, as I understand your testimony, Peninsular simply ordered it as they wanted it, how did you know how much to order?

A. Well, I just said we were on an allotment basis. I had to get it as I could.

Q. Did you always get enough to fill Peninsular's orders?

A. I tried to keep enough in stock, yes, sir.

Q. Was Poinsettia Dairy a customer of the fine paper department?

A. No, sir, I didn't sell them, as I recall, that was handled mostly through the coarse paper department.

Q. Was the Record Press of St. Petersburg a customer of the fine paper department?

A. That is right.

Q. Did you or not sell The Record Press a size of newsprint which was not used by any other customer?

A. No, sir.

Q. Did you formerly, at the time of the previous trial in this matter, sell such a size of newsprint to The Record Press?

A. Such a size? What do you mean by that?

Q. A size of newsprint not used by other customers?

A. No, sir.

Q. Were there any other customers whose names you can recall for whom you ordered goods which were specially printed or otherwise labeled with the customer's name or label?

A. No, sir, all of our goods was marked Tampa Paper Company.

Q. All of it?

A. Yes, sir.

Q. In the fine paper department?

A. That is right, shipped to us in Tampa.

Q. In what lines of business, generally, were the customers of the fine paper department engaged?

A. Printing, stationery business.

Q. Any newspapers?

A. Sure, newspapers, yes, sir. Well, that is, small newspapers have printing departments along with it—use the same equipment.

Q. Did your department handle gummed tape?

A. Gummed sealing tape, we handled gummed paper.

Q. I am talking about gummed tape.

A. Cloth tape?

Q. Yes.

A. Yes, we had it for the binderies.

Q. What?

A. We had it for the print shop binderies.

Q. But that was not in any case printed or otherwise marked for the customer?

A. No, sir.

Q. Now, direct your attention to this item in the summary I have here and would like to first show you an item handled through the fine paper department, or the coarse paper, July 16, 1945, to the Hodge Podge at Sarasota, 7 rolls of tape printed?

A. That is a coarse paper item. We could have handled it but we didn't.

Q. You didn't handle that kind of item?

A. Yes, sir, we have sold it plain to stationery stores.

Q. While you were there was that item handled through the coarse paper department or the fine paper department?

A. Principally, through the coarse paper department.

Q. All pulps were handled by the coarse paper department, were they not?

A. Yes, sir.

Q. I will show you a list of orders for rolls of tape, all printed, and will ask you to examine that and state whether those items were handled by the coarse paper department or by the fine paper department?

A. Those were handled through the coarse paper department.

Q. Did you supply any of the Cigar Companies with papers of any kind?

A. Direct, you mean?

Q. Yes.

A. No, sir.

Q. Did you or not carry an item of book paper for the Florida Grower Press that was generally not carried in stock?

A. I just advised you I didn't carry any particular size but they used a lot of a size we carried.

Q. I didn't understand that your testimony related to book paper. I thought we were discussing other types of paper?

A. No, sir.

Q. You spoke a moment ago of being on an allotment basis with some of the manufacturers. Do I understand from that that the manufacturers were unable to supply you with all of the goods you ordered, and, consequently allote dyou only a portion of your needs?

A. Most of that tonnage allocation, I might say, was handled in Jacksonville.

Q. How did you yourself handle your own allocation to your customers during the year when you were unable to obtain sufficient supplies to meet the demands?

A. I didn't have any particular allocation.

Q. How did you distribute the limited supplies which you received among your customers?

Mr. Kurz:

Objected to on the ground that it is irrelevant and immaterial, and deals with business practices that have no bearing on this case:

A. We didn't have any allocation program. I mean if a customer was going to have an order up of a particular size paper we carried in stock and I didn't have enough of it, and I could get it in the next quota, or whenever I could get it, to tell you the truth, I would order it, place it with the mill.

Q. Did you have certain groups of customers who generally ordered certain amounts of particular goods?

A. No, sir.

Q. Did you generally, during the war years, receive orders for more goods than you could supply your customers?

A. Yes, sir.

Q. What did you do with those orders when you got them?

A. I just turned them down.

Q. Just turned them down completely?

A. If we couldn't furnish it, that is all we could do.

Q. Suppose that the reply which you could receive was, say, 50 per cent of your orders. On what basis did you make deliveries when supplies came in?

A. Well, if it was for a particular job that the printer had—they get jobs—large quantities, why, during the war the natural procedure was for them to get the paper from anywhere they could. If they had to buy a little from us and a little from someone else to complete the job, that's what they did.

Q. Suppose you had a dozen printers that had placed orders with you for a particular item, twice as much as you got in, did you or not divide that among them on a 50 per cent basis?

A. First come, first served.

Q. You would not send out the whole supply to fill the first order you picked up, if necessary, and neglect—

A. (Interrupting.) If we had an order for it.

Q. Suppose you had a dozen orders and had enough goods to fill only half of them?

Mr. Kurz:

Objection.

Mr. Downing:

Let me finish the question.

Q. Suppose you had a dozen orders and only had enough goods to fill 50 per cent of the total orders?

Mr. Kurz:

The same objection to that question. It calls for business practices and matters that are irrelevant and immaterial to this issue.

Mr. Downing:

Read the question.

(Question read.)

A. I am trying to think of some particular item that all the printers would use normally, which would be No. 10 envelopes. They were very scarce during the war, and are now to a certain extent. We would have orders, say they would give us orders for 50,000 and they would normally use 10,000 during the slow times before the war. We knew practically what a printer would use, according to his size. Of course, some of the smaller printers would get larger jobs sometimes, but if there was one printer who had normally bought twenty-five or fifty thousand at a time for his stock, we would give him probably more, if it was an item that was a slow moving item, as I said before, first come, first served, and if he had an order that would take it all, we would give it all to him.

Q. If you had a fast moving item, as I understand it, you would attempt to apportion the goods among your customers upon the basis of what you considered their normal needs?

A. That is right.

Q. Did you or not assume that some of the orders were padded beyond the customer's needs?

Mr. Kurz:

Let's have the same objection to all this line of questioning.

Mr. Downing:

All right.

A. When a customer gives me an order I don't question what it is for, whether he is stocking it or not. I took the order. I was selling.

Q. I got the impression a moment ago, when you spoke of getting an order for 50,000 of a particular item, and under normal conditions the fellow might order ten, I got the impression that you were suggesting that perhaps some of these orders were being padded by the customer?

A. I don't think they were, frankly, for this reason, that I think the average customer was trying to buy more than his normal needs, not his normal needs but he was buying ahead, and he would give the printer an order, probably for three times his needs and the printer in turn would try to buy three times more than he normally bought.

Q. Up until the time you left there in November 1945, had goods become any more plentiful in the fine paper line?

A. No, sir.

Q. Had the demands of your customers, to any extent, diminished up until then?

A. No, sir.

Q. Can you state what proportion of the fine paper item was furnished by the Southrn Industries in Jacksonville?

A. No, sir, I couldn't tell you right off hand.

Q. Can you state what proportion of the fine paper items were shipped from points outside of the state?

A. No, sir, I couldn't answer that.

Q. Are you able to state whether the items supplied from out of the State are more or less than half of the fine paper items?

A. What is the question?

Q. Can you state whether the items supplied from out of the State were more or less than half of the fine paper items?

A. More than half of what?

Q. The total items you handled?

A. I would say yes.

Q. Which way, more or less?

A. More.

Q. What were the main lines of fine paper items which were manufactured and supplied you at Southern Industries?

A. Envelopes, poster paper, stenographic notebooks, index charts, and I have gotten a lot of plain brown wood paper up there that they sheeted for us.

Q. Plain what?

A. Plain brown wood paper that they sheeted for us.

Q. What other items?

A. That is all I can recall right now.

Q. Did you get all of your envelopes from the Southern Industries?

A. No, sir.

Q. What proportion of them?

A. I couldn't answer that.

Q. More or less than half?

A. More than half.

Q. From Southern Industries?

A. Yes, sir.

Q. Did you get all of your poster paper from Southern Industries?

A. Yes, sir.

Q. Did you get all of your steno notebooks from Southern Industries?

A. Yes, sir.

Q. Did you get all of your index card from Southern Industries?

A. Yes, sir.

Q. Did you get all that sheeted brown wood paper from Southern Industries?

A. That was a very small item. I don't think it happened but four or five times.

Q. How many items were handled by the fine paper department?

A. I couldn't even estimate it, it was so many.

Q. Can you state whether or not they ran into the hundreds?

A. Grades? Do you mean grades of paper?

A. [Q.] Items carried by the department, the fine paper department?

A. Well, I presume you mean grades.

Q. Well, on that basis, how many various items were handled?

A. I couldn't give you a definite figure or estimate right off hand.

Q. Can you state whether or not it would run into the hundreds?

A. There is a different definition there of items and grades in the paper industry.

Q. Take it on the basis of grades and answer, would it run into the hundreds or not?

A. No, sir.

Q. On the basis of items, would it run into the hundreds or not?

A. Yes, sir.

Q. All together you named five items supplied you by Southern Industries?

A. Five grades I named.

Q. Five grades supplied you by Southern Industries. Can you state what proportion of the total grades that would constitute?

A. What proportion of the items?

Q. Of the total grades, I believe you said this was grades?

A. No, I wouldn't know right off hand, unless I had my price book.

Q. Does the price book list all the grades or items handled by the fine paper department?

A. Yes, sir.

Q. Does the fine paper department in Tampa cover the St. Petersburg area?

A. Yes, they do.

Q. During the time you were there, do you know whether the Tampa warehouse received goods which were destined for St. Petersburg and Lakeland on the coarse paper side?

A. No, I didn't have anything to do with the coarse paper.

Q. Don't you know of your own knowledge that at one time the Tampa Warehouse received goods which were going to the St. Petersburg and Lakeland branches?

Mr. Kurz:

Objection to the question. It assumes something that is not in evidence.

Q. Go ahead and answer.

A. In the coarse paper? No, sir, I don't know about the coarse paper at all.

Q. Other than the items which you received from Southern Industries did the fine paper department in Tampa get any other goods from manufacturers in Florida?

A. Other than printers, if you consider them manufacturers.

Q. What did you get from printers?

A. For printers.

Q. I am asking you about your incoming goods now, that you supplied to your customers. Did you get any of them from Florida manufacturers except Southern Industries?

A. No, sir.

Q. Then, all of the rest of the goods distributed by the fine paper department came from out of state manufacturers?

A. Yes, sir.

Mr. Downing:

Your witness.

Cross Examination

By Mr. Kurz:

Q. Mr. Atkins, Mr. Downing asked you if you frequently received orders for merchandise not in stock from customers and you answered yes. How often would you get orders from customers for items ordinarily carried in stock, but out at the time?

A. Oh, quite frequently.

Q. Well, daily, weekly, monthly or what?

A. It might be daily. I couldn't answer that.

Q. For what particular kind of items would that be?

A. Everything we carried in the print department if they ran out of it.

Q. How large would those orders be usually?

A. Oh, some of them maybe a hundred sheets, some might be a thousand sheets, some might be ten thousand sheets.

Q. And that is relating to items which ordinarily you carried in stock but happened to be out of temporarily?

A. Yes.

Q. Then, what would be done with those orders, would you immediately order a hundred sheets of paper for that particular customer?

A. If we couldn't get it out of Jacksonville, that was our normal supply on short items.

Q. Jacksonville would usually supply it?

A. That's right, they carried a kind of master stock.

Q. Then, on orders that Jacksonvillle could not supply, would you make a general order to replenish your stock or would you order for the particular customer to fill that special order?

A. During the war, when we were on allocation, as I say, or got less tonnage, the paper business was run on a quarterly basis and we would have to send our requisitions into Jacksonville when they would tell us to, that they were making up the quarterly allotment and they in turn would order the paper for us.

Q. In other words, those orders would be for your quarterly allotment rather than an order for the specific order you had gotten from the customer?

A. Yes, we got some special orders of, say a particular color that we didn't normally carry, but that was very small.

Q. These orders for the Peninsular Telephone Company, what item was that?

A. It is a roll paper that they use on an addressograph machine. They used to have the same paper printed in sheet form by local printers and they bought a machine that did their own printing and it had to be a roll.

Q. How often did you deliver that to them?

A. I couldn't answer that right off hand, but it would be propably once or twice a month. The paper came in and was all billed to them at one time and they didn't have space enough up in the office where they ran it.

Q. How large would that delivery be approximately?

A. Three to four rolls.

Q. How much would it weigh?

A. I would say 150 pounds a roll.

Q. Then that would be once or twice a month, you say?

A. At the end of the month, as I recall.

Q. Was that the same type of paper that you ordinarily carried in stock?

A. The same grade of paper, yes, sir, except it was in rolls.

Q. You said something about lithographed envelopes being folded for particular printers. Where was that folding done?

A. In Jacksonville.

Q. You stated that except for the items, or the grades I believe you said, supplied by the Southern Industries of Jacksonville, all of your merchandise came from out of the State. Did you receive any merchandise from the Jacksonville Paper Company of Jacksonville, Florida?

A. Yes, sir.

Q. When you said all of your merchandise came from out of the state—

A. (Interrupting.) I meant from out of town mills, out of state mills.

Q. But they did not ship all of it direct to you?

A. Not all the time, no, sir.

Q. In other words, some of the merchandise which you classed as out of state merchandise came to you from the general warehouse at Jacksonville?

A. That's right.

Q. Among the items you got from Jacksonville, were there included second sheets and manila envelopes?

A. Right, second sheets and railroad manila.

Re-Direct Examination.

By Mr. Downing:

Q. Do you know where the second sheets and those other items you mentioned just then were manufactured?

Mr. Kurz:

Objected to as irrelevant and immaterial.

A. You mean the paper.

Q. The last items you mentioned as coming from Jacksonville?

A. The railroad manila?

Q. Yes.

Q.[A.] No, I don't know where the paper itself came from, but we got all of our railroad manila and second sheets from Jacksonville.

Q. Shipped to you from the Jacksonville plant, the Jacksonville Paper Company?

A. Yes, or Southern Industries.

Q. What?

A. It came in a car every time from Jacksonville.

Q. Referring a moment again to your arrangement or understanding with the Peninsular Telephone Company. Did you have any other standing order with other customers for regular periodical deliveries?

A. No, sir.

Q. Did you have any contracts with other customers—

A. (Interrupting.) No.

Q. —for supplies or goods over a period of time?

A. No, sir.

Q. Will you explain the organization of the fine paper department of the Tampa Paper Company with reference to personnel? I believe you were manager?

A. That's right.

Q. And who was—

A. (Interrupting.) Mr. Williford was general manager of the Paper Company.

Q. Was he also manager of the coarse paper department?

A. Yes, sir, that is right.

Q. As general manager he acted as manager of the coarse paper department also?

A. Yes.

Q. Who was the cashier?

A. Frank Minor.

Q. Who was the stenographer in the fine paper department?

A. Mrs. Lewis.

Q. What is her name?

A. Mary Sue Lewis.

Q. Is she also known as Mrs. Fred Lewis?

A. Yes.

Q. Was she the only clerical employee in the fine paper department?

A. No, sir.

Q. Who else did you have?

A. At various times you mean? Have you got any specific time?

Q. How many did you have other than Mrs. Lewis?

A. Two.

Q. That would be three clerical employees all together?

A. No, Mrs. Lewis and one man.

Q. Who was it?

A. Mr. Stewart was there the last two or three years.

Q. Then in the warehouse how many employees did you have in the fine paper department?

A. During the war it would vary from none to four.

Q. Would they occasionally shift back and forth to a fifth in the coarse paper department as the need arose? Let me put it this way. Were you able during the war to confine the warehouse employees to their specific department?

A. That's right.

Q. Or did they work in both?

A. Very seldom did the coarse paper work in the fine paper.

Q. How often did the fine paper boys work in coarse paper?

A. I couldn't tell you that, because during the war it has been so mixed up, I couldn't say. The coarse paper men have helped us unload cars, even Jim Williford has gone out and helped fine paper and fine paper once in awhile helped them. We all had our hands full.

Q. Were there any separate truck drivers for fine paper and coarse paper?

A. Oh, we had a truck we called the fine paper truck but it hauled as much coarse paper sometimes as fine paper.

Q. In turn, did the coarse paper drivers haul any fine paper?

A. Yes, sir, sometimes, very seldom.

Mr. Downing:
That is all.

Mr. Kurz:
That is all.

(The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

J. R. WILLIFORD, a witness for the plaintiff, being first duly sworn, testified as follows:

551 Direct Examination.

By Mr. Downing:

Q. You are Mr. J. R. Williford?

A. Right.

Q. You are manager of the Tampa Paper Company?

A. Yes.

Q. Do you also act as manager of the coarse paper department?

A. Yes, sir.

Q. Mr. Williford, did we take your deposition here in Tampa about five years ago prior to the original trial in this case?

A. Has it been about five? I don't remember how long ago.

Q. 1941.

A. Yes.

Q. Did you later testify in Jacksonville at the trial?

A. Yes, sir.

Q. Before Judge Waller?

A. Yes, sir.

Q. You were manager of the Tampa Paper Company at that time, weren't you?

A. Yes.

Q. Can you state generally whether the methods of doing business has changed any since then?

Mr. Kurz:

Objected to because it is too general.

The Witness:

Say that again. Generally have they changed?

By Mr. Downing:

Q. Yes.

A. Well, there were conditions brought on by the war, yes, but not generally, no. I would say generally they are the same.

Q. Will you state to what extent war time conditions brought on any changes in the methods of doing business?

A. Well, of course, there is the shortage of labor, that has hurt some. We had to put up with a lot of things we couldn't get done, work we had to do ourselves and things of that kind.

Q. Well, I am asking you how it has affected your method of doing business?

A. Oh, no, it hasn't affected our methods, no.

Q. Did war time conditions result in your being unable to obtain a sufficient or adequate supply of many lines of goods?

A. Yes, sir.

Q. Has that condition continued to the present time?

A. Yes, sir.

Q. As the result of those conditions have you always been able to supply the demands of your customers?

A. No, sir.

Q. Do you frequently receive from your customers orders for more goods than you can supply them?

A. Oh, yes.

Q. What did you do about that, how do you satisfy them?

A. We don't. We haven't got it and we can't sell it.

Q. Do you have any practice or custom of allocating to your trade a portion of the goods they order?

A. We don't take the order if we haven't got it. Yes, we allocate it to them, because we can't supply them with what they want.

Q. Will you explain, in general, the basis of any allocation or allotment that you make among your customers.

By Mr. Kurz:

Objected to on the ground that it is irrelevant, and immaterial and calls for business practices which have no bearing on this case.

A. Not having the merchandise, we gave the customers what we could spare them, and according to the size of the store.

Q. Did you base the allocation to any extent on what their demands had been under normal conditions?

A. Yes, and taking into consideration the fact that some customers had grown larger with the war business.

Q. And that their demands had increased proportionately?

A. That is right.

Q. I assume that under the conditions which existed, you might frequently receive orders for twice as much as you could supply?

A. Right.

Q. In that case, did you allot or allocate the supplies you had on a fifty percent basis among your customers?

A. No certain basis, it depended upon how much merchandise we got and how big the store was.

Q. In other words, your allocation was not based on the size of the order which you had received, but on the amount of business which they had normally done?

A. And the amount we received.

Q. Did you or not attempt to make your allocation on the basis of a customer's needs with relation to your supply?

A. As I understand that, did we give the small store as much as we did the large store.

Q. No, I'm asking you the opposite. Did you attempt to base your allocation on the customer's need?

A. Oh, yes, sure.

Q. Did you continue to carry in stock, generally the same lines of merchandise which you had carried before the war?

A. Yes, sir.

Q. And, I assume that because of the emergency conditions, your supplies would more frequently become exhausted?

A. Yes, sir.

Q. And during such periods, when the supply was exhausted, did you receive orders from customers for those lines?

A. I don't understand you.

Q. Well, when you were out of stock in certain lines, did you receive orders from customers for the goods which you were out of?

A. Oh, yes.

Q. Did you, in turn, place orders with the Jacksonville office to fill those?

A. The chances were, they already had the orders.

Q. And if they had not already been ordered, you would then place an order for them?

A. No, sir.

Mr. Kurz:

Objection to that line of questions. The questions are leading, Mr. Downing.

Mr. Downing:

I will reframe that question. If the goods had not already been ordered from Jacksonville, would you or not place an order with Jacksonville to fill the order?

A. No, sir, not any certain item. If we were out, the chances are it was already ordered. Because a man called up and asked for something we didn't have, we didn't then turn around and order it.

Q. If you hadn't ordered it, what did you do about filling his order?

A. If it was merchandise we had carried in stock there and perhaps I had overlooked ordering in the rush to do things and the turmoil under which we were working, I would order it, yes.

Q. In these other cases, where the goods had already been ordered from Jacksonville, at the time you received the customer's order, what was your practice with reference to filling the customer's order when the new supply came in?

A. We would allot it to him.

Q. And would you or not fill the order immediately upon receipt of the fresh supply on an allotment basis?

A. Sometimes we did, and again, we didn't have merchandise to go around to fill all the orders.

Q. Did you or not make it a practice to make such deliveries as quickly as possible?

A. Oh, yes.

Q. During the period of time since the original trial in this case, has the Tampa Paper Company continued to order for its customers certain lines of goods which it does not normally carry in stock?

A. With very few exceptions, yes.

Q. What do you mean by these "Very few exceptions"?

A. Well, we have handled some fountain pens that we never handled before; we have handled some substitute items. We used to carry a twenty pound kraft paper for the wrapping of Cuban bread and we are now using a fruit and vegetable wrapper for that purpose. I think we handled some dish cloths at one time, a shipment or two of dish cloths.

Q. That you didn't carry in stock?

A. Never did carry before the war.

Q. Do I understand that you do not carry in stock certain lines that you didn't carry before?

A. No, not now. No, sir. Those items, of course got hard to get and we couldn't reorder them.

Q. Do I understand that I got it backwards—that there are fewer lines you carry in stock than you did before?

A. Yes.

Q. Consequently, there are more lines which you order specially for your customers?

A. No, we don't order them specially for them, no, sir.

Q. Perhaps I used the wrong word. I am referring to orders which you placed for customers on goods which you don't normally carry in stock?

A. We didn't order them for any particular customer. It was merchandise to be sold to anyone.

Q. I understand that, if I can summarize my understanding of your testimony, you carry certain lines normally in stock?

A. Yes.

Q. And generally, you don't have to order those lines to fill any specific order?

A. That's right.

Q. But, I understand also that there are certain goods which your customers may order that you don't carry in stock normally, what do you do when you get an order of that kind?

A. Well, now, are you talking about special stuff, like printed orders, printed sales books?

Q. Printed sales books or any other kind of goods that you don't normally carry in stock?

A. We order them for them if we can get them.

Q. You mentioned the printed sales books. Will you mention any other lines of goods which you supply to your customers on their orders, but which you don't normally stock in the warehouse?

A. Anything of a special nature that is printed with the customer's name, such as sales books, notion bags, hat bags, printed wrapping paper, printed clothing boxes.

Q. Do yo supply them with any printed cookie boxes?

A. Any what?

Q. Printed cookie boxes?

A. Pastry boxes?

Q. Pastry boxes, that's the word?

A. Not during the war, no, sir. What few we have supplied of those have been in the last few months.

Q. Since when?

A. Oh, six months, six or eight months.

Q. Do you supply any printed laundry bags or dry cleaning bags?

A. Yes, sir, but that has only been in the last six or eight months also, is what you mean, any time up till today?

Q. Up till today?

A. Yes, sir.

Q. Do you supply to your customers any printed cups or pails?

A. Yes, well, not a cup or pail. We have had one for two orders for printed cartons this year.

Q. You handle ice cream cups don't you?

A. Yes

Q. Do any of your customers order them specially printed?

A. No printed ice cream cups.

Q. What about cottage cheese pails?

A. No, sir.

Q. What about lids for such pails or cups.

A. No, sir, I wish we could have had them.

Q. Now, those printed items which you have mentioned—first, are there any others that you can think of?

A. What do you have down there?

Q. I have notion bags, hat bags, printed wrapping paper, printed clothes boxes, printed pastry boxes, printed laundry bags, printed dry cleaning bags and printed cartons?

A. No laundry bags, that's dry cleaning bags.

Q. Any printed labels?

A. No, sir.

Q. Any printed gummed—

A. (Interrupting.) Gummed tape, yes, we have gummed tape.

Q. How many of those, or which of those items which you have mentioned, are supplied to you by Southern Industries in Jacksonville?

A. The garment bags.

Q. That is the dry cleaning bags?

A. The dry cleaning bags and the pastry boxes.

Q. All right.

A. And some of the clothing boxes and some of the notion bags. I don't recall any hat bag orders, there may have been a few of those but I don't recall right off.

Q. Are the remainder of those items supplied by out of state manufacturers?

A. Let's see, sales books are all supplied out of state, and some of the notion bags, and what is that (the witness points to a list made by Mr. Downing)?

Q. Hat bags?

A. Some of the hat bags, and some of the wrapping paper and some of the clothing boxes are from out of the state, and what is that (the witness again points to Mr. Downing's list)?

Q. Printed cartons.

A. Ice cream cartons. Yes; they are other than Southern Industries.

Q. That is from out of the state?

A. Yes.

Q. Now, Mr. Williford, do you recall that when you testified before at the trial, a lot of questions were asked you about a contract you had with Poinsettia Dairies, for a batch of ice cream cups?

A. Yes.

Q. Has that arrangement or understanding or contract with Poinsettia been continued since the original trial?

A. It has been discontinued.

Q. When was it discontinued?

A. I don't know.

Q. How long after the trial was it discontinued, if you know?

A. The trial was when, in 1941?

Q. 1941 in April.

A. April of 1941, let's see—we went to—as a guess, I would say it was discontinued in 1942.

Q. After the contract was discontinued or terminated, did Poinsettia continue to remain a customer of yours?

A. Oh, yes.

Q. And you continued supplying them ice cream cups and other items?

A. Such as we could.

Q. Did they continue to order them?

A. Yes, sir.

Q. How did the arrangement change?

A. I don't understand you.

Q. Well, formerly, you had a contract and you say the contract terminated, but they continued to order and you continued to supply. In what respect was your arrangement changed?

A. Well, the cups were pretty hard to get at that time and he was buying cups wherever he could, I believe that was handled out of Daytona, wasn't it McGee.

Mr. Downing:

You will have to testify, Mr. Williford.

A. (Continued.) I don't know whether what business we were able to get went into Jacksonville, the Jacksonville office or whether it went into Daytona. We didn't get it here.

Q. Did you continue to supply from here any items for Poinsettia?

A. Yes, sir.

Q. Did they place with you any standing orders after the contract terminated?

A. For what?

Q. Ice cream cups or any other items.

A. If we could furnish them, yes, sir.

Q. Did the standing orders call for periodical deliveries in the event you could get the goods?

A. They would take them if we could get them. Most of their business after the cup deal—after we couldn't furnish cups—was other items that were furnished from stock.

Q. Did they have standing orders with you for any of those items?

A. No, sir, they were ordered as needed.

Q. Other than the Poinsettia, did you have other customers who placed with you standing orders for periodical delivery?

A. That is special merchandise intended for one man?

Q. No, I'm not asking about that now, I have left special things for the time being. I am asking about contract agreements or understanding you had with customers for periodical deliveries of anything?

A. No, I don't recall anything.

Q. Is Record Press still a customer of yours?

A. I don't know.

Q. Is Purity Ice Cream Company at Plant City a customer of yours?

A. Purity Ice Cream Company, at Plant City, I think we have sold them. I don't recall that they are a customer now, that name is familiar.

Q. I will ask you to think back into the past now, to the time of the original trail and state whether you recall, at that time, you had a contract or understanding with them for a 5 ounce ice cream cup, deliveries to be made in lots of five and ten thousand?

A. I don't remember, Purity Ice Cream Company at Plant City.

Q. Yes.

A. I don't recall.

Q. Do many, or do a number of your customers still continue to place with you orders for goods to be specially printed with their label or names?

A. Not as many as there were, because we can't get the merchandise. We have some orders, yes.

Q. Do you recall Mr. Charles L. Carter, the wage hour inspector, when he was down here last October or November and made a wage hour inspection?

A. I never did see him.

Q. Do you know whom he talked with among your supervisory staff in Tampa?

A. There was some man in there talking to the employees but I never did—yes, I met him too, I believe I met him, yes.

Q. Whom did you direct him to for information with reference to the business?

A. Well, he contacted the employees.

Q. Did he or not get certain information as to the kinds of business you were doing?

A. I don't know, he didn't ask me.

Q. Did you refer him to anyone?

A. No, sir.

Q. I have here a list covering a representative period of time, a summary which I prepared of certain invoices and orders. I will ask you to refer to some of these and state what you know with reference to the particular item. I show you first—

Mr. Kurz:

When you get through with your question, I will object.

Q. I show you first the summary of an item of June 21, 1945, printed for Estroff's Department Store, Plant City, Florida. I will ask you if that was an order which was specially printed for the customer?

Mr. Kurz:

I object to the question, in so far as it assumes that the list being handed to the witness is a representative list, and in so far as it assumes matters of fact which are not in evidence.

A. I don't know that that is our order. We have sold Mr. Estroff.

Q. Have you sold him printed boxes?

A. Yes, I am quite sure.

Q. What kind of boxes were they?

A. Clothing boxes.

Q. Where were they printed?

A. That I don't remember. They might have been printed in Jacksonville and they might have been printed up in the country.

Q. I show you specifically the reference to the manufacturer as being J. Winklemann Paper Sales Company, Philadelphia. You have bought boxes from them, printed boxes?

A. Yes, sir.

Q. I direct your attention to the item of July 28, 1945 goods shipped by International Plastic Corporation, 12 specially designed wooden dispensers. Do you know what that item is?

A. Yes, that's a dispenser to dispense their brand of tape which is in competition with Scotch Tape and which is used by one. "Specially designed" means it is a wooden affair because they couldn't get metal. They were not meant for any one special person.

Q. Now, there is an item of July 27, 1945, a shipment from the Harvy Paper Products Company, designed place mats, printed. Were they ordered for any particular customer?

A. Well, it could be a stock print, I don't know, we handled their stock prints, napkins, place mats.

Q. That Warwick, is that the trade name of the manufacturer?

A. No, I'm inclined to believe that's a stock design and the "Warwick" designates this particular color of ink and design in the napkin. It can be used by anyone.

Q. On July 31st there is a shipment from the Baltimore Salesbook Company printed, "Simmons Food Store". Was that ordered for that customer?

A. Yes, sir, are those supposed to be taken from our records?

Q. Yes, sir.

A. We have sold Simmons Food Store salesbooks.

Q. Did you order any special goods from the American Wire Form Company, Jersey City, New Jersey?

A. We ordered stock items, not for any special customer.

Q. I direct your attention to an item of July 30; 12 model M Gliders, which were shipped to Martin Brothers, Arcadia, was that or not a special item, or one which you carried in stock?

Mr. Kurz:

Objection to the question on the ground that it assumes an order which has not been shown and of which the witness apparently has no personal knowledge. Counsel refers to a list which is not in evidence and has not been offered in evidence and has not been authenticated in any way.

The Witness:

What is the date of that, July 30th?

Mr. Downing:

1945.

A. July of last year. I don't believe we were required to get priorities on those things then. A lot of this deal stuff required priorities is the reason it was shipped direct. It was ordered shipped direct to him because it saved him freight. It was a little cheaper than had we supplied it out of stock.

Q. Did you carry that item in stock?

A. Oh, yes.

Q. With reference to priorities, how much business did you do in items for which priorities were necessary?

A. I have no idea.

Q. What?
A. I have no idea.
Q. Did you handle such items frequently or not?
A. No.
Q. For how many customers did you handle such items.
A. I have no idea.
Q. Can you remember any specific customer?
A. That we got priorities for?
Q. Yes.
A. On this item or any items?
Q. Any item, priorities in general?
A. What is the question, how many customers?
Q. If you know of any for whom you got goods for which priorities were necessary?
A. I don't know.

Mr. Downing:

If you prefer, Mr. Kurz, I will be glad to await the production of the originals of these from the files of the Tampa Paper Company.

Mr. Kurz:

Mr. Downing, I don't know whether Mr. Williford has any personal knowledge of these things or not. If he does, I have no objection to the question, but when Mr. Williford says, "Were these taken from our records", apparently, he has no personal knowledge of these orders and if he does not have any, I intend to move to strike it out on the ground that he doesn't have such knowledge.

Mr. Downing:

We expect to prove by Mr. Carter, that this list was taken from their records.

Mr. Kurz:

You might ask Mr. Williford if he knows personally about these things, if he does know, I have no objection.

The Witness:

May I explain this. We bought boxes from these people.

Q. Which people.

A. Winklemann, and I know we sold Jack Pendala boxes, but I don't know that we have an invoice down there on that date printed for that man.

Q. I will ask you if you have a customer known as Russell's Ladies' Shop?

A. Yes, sir.

Q. Did you order for them frequently printed goods from the Waltham Bag and Paper Company?

A. When?

Q. In July, 1945 or at any other time.

A. Yes, we have ordered special printed bags for Russell's Ladies' Shop.

Q. How frequently?

A. Two or three times a year.

Q. Do you have a customer known as Cecilia T. Levy & Company at Sarasota?

A. Yes, sir.

Q. Have you ordered for that concern, special goods from the General Printed String Company of Milwaukee?

A. Yes, sir.

Q. How frequently?

A. Once, maybe twice a year.

Q. A while ago, we mentioned Estroff's at Plant City, have you ordered for them more than once special goods or specially printed goods?

A. Yes.

Q. From Winklemann or other points outside the State?

A. Yes.

Q. Is the Park Cleaners and Laundry a customer of yours?

A. I don't know them, where are they located?

Q. I have their name here several times.

A. Park?

Q. Yes.

A. No, I don't recall.

Q. I think it's in Tampa.

A. No, we don't have any Park Cleaners.

Q. Well, what about Oak Park?

A. Oak Park, yes, we have an Oak Park.

Q. That's right, it is Oak Park.

A. Yes.

Q. Do you order for Oak Park Cleaners and Laundry, special goods or specially printed goods from the Central Paper Company, Menasha, Wisconsin?

A. Yes, sir.

Q How frequently?

A. Gummed tape, that would be once or twice a year.

Q. Once or twice a year?

A. And I don't suppose it has averaged twice a year because there was lots of times we coudn't get printed tape.

Q. Would it refresh your mind if you looked at this list again prepared by the inspector from your records. I direct your attention to an item of January 1, 1945; 200 rolls of tape printed for Oak Park Cleaners and Laundry and again, an item July 23, 1945; 200 rolls of tape for the same concern?

A. That's back in July?

Q. That's right.

A. When was the next one after that?

Q. I just have that period of a year.

A: It might average twice a year, but I doubt it.

Q. Do you have a customer known as Peninsular Cigar Company?

A. I don't recall them.

Q. It is probably in Tampa.

A. If we do have, if we have had any printed business from Peninsular Cigar Company, it hasn't been more than one or two orders.

Q. Do you have an account with the Albany Drive-In Market?

A. Yes, sir.

Q. Do you order any gummed tape or any other special orders from the Central Paper Company for that concern?

A. Yes, sir.

Q. Is it specially printed or not?

A. Yes, sir.

Q. How often do you order for them?

A. Maybe twice a year.

Q. Do you know the Economy Wholesale Grocery Company as a customer?

A. Yes, sir.

Q. Do you order from the International Plastic Corporation, tape, or other special goods for that customer?

A. We have, yes.

Q. How often?

A. I think there have been two shipments that have gone to him in the past three years.

Q. Is Viola Todd a customer of yours?

A. Yes, sir.

Q. Do you order for her printed boxes from Winklemann in Philadelphia?

A. I don't recall that we have ever ordered any from Winklemann, but we have had boxes made for her.

Q. By whom?

A. American Box Board Company, Grand Rapids, Michigan.

Q. How often?

A. About three times a year.

Q. Are they specially printed or otherwise specially made for her?

A. Yes, sir.

Q. Is Smith Brothers at Plant City a customer?

A. Yes, sir.

Q. Have you ordered specially for them, baskets from the American Wire Form Company?

A. Not specially, no, sir. It is a stock item.

Q. Is the Hodge Podge at Sarasota a customer?

A. Yes, sir.

Q. Have you ordered for it, tape or other special items from the International Plastic Corporation?

A. Yes, sir.

Q. How often?

A. I don't believe there was but one order of printing, the first one was defective and we had to get another shipment in.

Q. What did you do with the defective goods?

A. Shipped it back to the factory.

Q. Direct?

A. No. I don't believe it was ever shipped back. I think it is still down at the office. The salesman gathered it up, and it is in a box down there now.

Q. How often do you find it necessary to return goods to the manufacturer?

A. I have no idea, maybe once every two or three months.

Q. Is Nichols Mercantile Company at Nichols, Florida, a customer?

A. Yes, sir.

Q. Do you order for him printed sales books or other special articles from Baltimore Sales Book Company?

A. Yes, sir.

Q. How often?

A. About once a year.

Q. Is the F. & O. Standard Cedar Company at Crystal River, Florida, a customer?

A. Yes, sir.

Q. Do you order twine from Schmeerhorn Brothers in St. Louis for that Company?

A. Yes, sir.

Q. Is that a special item or not?

A. Yes, sir.

Q. How often do you order such goods for that customer?

A. Once or twice a year.

Q. Do you order that item specially for any other customer?

A. We have, but not in the past year or so that I can recall.

Q. Is the New York Dress Shop in Tampa, a customer?

A. Yes, sir.

Q. Have you ordered for it, boxes or other special items from the Climax Manufacturing Company in New York?

A. Yes, sir,

Q. How often?

A. About three times a year.

Q. Is Wolf Brothers a customer?

A. Yes, sir.

Q. Have you ordered for it printed spools or other special items from the General Printed String Company in Milwaukee?

A. Yes.

Q. How often?

A. Two or three times a year.

Q. Is the Public Fruit and Vegetable Market at Clearwater a customer?

A. Yes, sir.

Q. Have you ordered for it printed sales books or other special items from Baltimore?

A. Yes, sir.

Q. How often?

A. I think we have had one order from them. I don't ever recall having but one special order from those people.

Q. Are Flat cups handled in the coarse paper department?

A. Yes, sir.

Q. Is that a regular stock item?

A. Yes, sir.

Q. Is it ever printed?

A. No, sir.

Q. Do you recall last July, ordering a million from the American Paper Products Company?

A. I have ordered a million, yes, from who did you say? American Paper Goods?

Q. American Paper Goods in Kensington, Connecticut.

A. Yes. we have ordered a million, that is a stock item.

Q. Have I asked you about the Albany Drive In Market?

A. Yes, sir.

Q. Is Madison Drugs a customer?

A. Yes.

Q. Have you ordered for it tape or other special items?

A. Yes.

Q. From whom did you order it?

A. Central Paper Company.

Q. In Menasha?

A. Menasha, Wisconsin.

Q. How often have you made such orders?

A. About twice a year.

Q. Is Greco's Master Market a customer?

A. Yes.

Q. Have you ordered for it from the Central Paper Company, specially printed tape?

A. Yes.

Q. How often?

A. I don't recall.

Q. Now, so that we can sort of group these together and make a little more time, I will ask you about these names in a group; Smitty's Grocery and Market, Mac's Food Shop, King Hardware Company, Mack's Market, Tom's, Margaret Ann, Ficarrotta & Company, Edwards Grocery, S. Agliano & Sons. I will ask you if they are all customers?

A. Yes, sir. All but that Edwards Grocery, I don't remember that.

Q. Have you ordered for those customers except Edwards, specially printed tape from the Central Paper Company?

A. I think so.

Q. How frequently do you place those orders, if you know.

A. They will run once or twice a year, depending on the customer. Some of them will buy it twice and buy larger quantities.

Q. I will ask you about this group: Tampa Drug Company, Supreme Doughnuts, Schwartz Grocery, Master Market, Matthews Corner, Florida Macaroni Company, Red Circle Market, Frank Zummas, and Orange Pharmacy, I will ask you if they are customers?

A. Yes.

Q. Have you also ordered for them, printed tape from the Central Paper Company?

A. I don't remember ordering tape for all of them.

Q. Which of them don't you remember ordering for?

A. That I don't remember ordering for?

Q. Yes.

A. That I don't remember?

Q. Right.

A. I don't remember this Supreme Doughnuts, this Master Market, there's no name on that; I don't know whose market that is.

Q. That's all I have.

A. I don't know about that, what's this?

Q. Red Circle Market, do you remember that one?

A. I don't remember that name, Frank Zummas, I remember him, I don't recall that the Orange Pharmacy ever bought printed gummed tape, he may have, I'm not sure.

Q. And for the others generally, how often do you order?

A. The Tampa Drug Company will go about three times a year, the others about once or twice a year.

Q. Was that tape also ordered from Central Paper Company?

A. Yes, sir.

Q. Here is a third group: Ideal Coffee Mills, Park Pastry Shop, Muff's Pastry Shop, Kelly Sea Food Market, are they customers?

A. Yes, sir.

Q. Have you also ordered for them printed tape from the Central Paper Company?

A. Yes, sir, all but that second one. I don't remember what was that.

Q. Park Pastry Shop?

A. No another one.

Q. Muff's Pastry Shop?

A. I don't recall Park but the others we have ordered tape for.

Q. How frequently?

A. Once or twice a year.

Q. Of those various customers which we have gone over here, have you ordered for them any other special

items other than what we have mentioned, which is the tape. That may not be a bad question in view of what I'm going to get to later. I will ask you what Ad Wrap is?

A. Wrapping paper.

Q. Is that ordered specially printed for the customer?

A. Sometimes.

Q. From whom?

A. Pacific Northwest Paper Mills.

Q. Located where?

A. At Vancouver, Washington, I believe it is, I'm not sure about that address.

Q. I will ask you if you have ordered specially printed Ad Wrap for the following customers: Oak Park Cleaners and Laundry, Adams-Magnon Jewelry Company, Madison Drug, Fulghum's Office. Economy Index, Sidney Davis Men's Shop, Frank's—

The Witness:

(Interrupting.) Frank's, is there any address on that, yes, I remember.

Q. (Continued.) McCaskill Clothing Company, The Blossom Shop, Hooker's Department Store, M. Flossie Hill Company, Weil-Mass?

A. We have ordered special wrapping paper for those customers with the exception of the Florist.

Q. The Blossom Shop?

A. I think his was a stock print.

Q. Other than that, was the Ad Wrap specially printed or otherwise marked for the customer?

A. Yes, sir.

Q. How frequently do you order that item for those or other customers?

A. Some of them buy once a year, most of them buy once a year. The most that we get that in from the larger accounts is twice a year.

Q. And all of that is ordered from the mill in Washington that you mentioned?

A. Yes, sir.

Q. What proportion of the goods distributed through the coarse paper department are manufactured outside the State of Florida?

A. Say that again now.

Q. What proportion of the goods which you distribute through the coarse paper department are manufactured outside of the State of Florida?

A. I have no idea.

Q. Well, let's get at it this way. What proportion of such goods is shipped to you from points outside the State of Florida?

A. In dollars and cents?

Q. Yes, in dollars and cents or otherwise.

A. I have no idea.

Q. Or otherwise, any other way?

A. I have no idea.

Q. How many items are normally stocked in the coarse paper department?

A. I don't know, you mean such as wrapping paper, toilet paper, towels and all?

Q. Is it or not a fact that it runs into the hundreds?

A. Yes, I imagine it's over a hundred. Yes, there is over a hundred items.

Q. Of those items, how many of them are supplied to you through Southern Industries in Jacksonville?

A. How many items we get from Southern Industries, when you say paper bags do you mean just paper bags, regardless of what kind of paper bag it is?

Q. No, I assume there are many kinds of paper bags and that each one is a different item in your price book, is it not? Using your price book as a guide, can you state in general how many items you carry in your coarse paper department?

A. That are made by Southern Industries?

Q. First, let's take them all, then we will get to Southern Industries?

A. How many items do we have in the coarse paper department?

Q. That's right?

A. I don't know.

Q. Will you state again if it doesn't run into the hundreds?

A. You are counting each item?

Q. In your price book.

A. In the price book. I wouldn't know unless I counted the price sheets.

Q. Let's turn to Southern Industries and will you state which of the items they manufacture and supply you with?

A. Well, let's see, the items we get from Southern Industries, let's see. Notion bags, hat bags, garment bags.

Q. Talk loud enough so he can get that.

A. I was going to give him the total.

Q. Give the name of each.

A. Items we get from Southern Industries?

Q. That's right.

A. Notion bags, hat bags, garment bags, grocery bags, hangers, envelopes, school supplies, now that includes—well, it's just school supplies, that's several items. Clothing boxes, pastry boxes, sausage boxes. That is all I can recall.

Q. Do you get all of your notion bags from Southern Industries?

A. No, sir.

Q. What proportion?

A. I don't know.

Q. More or less than half?

A. All we get—including the special orders now that are made specially with the men's names on them?

Q. Everything.

A. I would say we get 90 per cent of them from Southern Industries, may be 95.

Q. Do you get all of your hat bags from Southern Industries?

A. Including all special items?

Q. Including everything.

A. Whether printed or plain?

Q. Yes.

A. I would say 95 per cent. That's a guess.

Q. Do you get all of your garment bags from Southern Industries?

A. Yes, sir.

Q. All your grocery bags?

A. Yes.

Q. All your hangers?

A. Yes.

Q. All your envelopes?

A. Yes. Wait a minute, we get a package envelope that comes from out of the state.

Q. Who manufactures that?

A. Logan Smith & Brigham.

Q. Where?

A. In Worcester, Massachusetts.

Q. Does that constitute a substantial item?

A. No, sir, very small.

Q. Do I understand that except for that all envelopes are furnished you by Southern Industries?

A. Yes, sir.

Q. Do you get all school supplies from Southern Industries?

A. Yes, sir.

Q. All clothing boxes?

A. No.

Q. What proportion?

A. The only thing I can do is guess.

Q. Well, make your best estimate?

A. About 80 per cent.

Q. Do all of your pastry boxes come from Southern Industries?

A. Yes, sir.

Q. All of your sausage boxes?

A. Yes, sir.

Q. Do you get anything from Florida manufacturers other than Southern Industries?

A. Get what?

Q. Get anything from Florida manufacturers except Southern Industries?

A. Yes, sir.

Q. What do you get and from whom?

A. We get fruit and vegetable wrappers from Conn Paper Company in Sanford.

Q. Anything else?

A. I don't recall anything else.

Q. Mr. Williford, does the Tampa Branch still receive certain shipments or portions of shipments which are destined for St. Petersburg and Lakeland?

A. In cars?

Q. In cars or otherwise?

A. In cars, we have unloaded part cars that are stopped over here and go to St. Petersburg.

Q. The remainder of the car goes to St. Petersburg?

A. Yes, sir.

Q. Are there any such cases where the remainder of the car goes to Lakeland?

A. Well, Lakeland would stop first, you see.

Q. At the time of the original trial there was some testimony with reference to certain goods being unloaded here, received here and later trucked to Lakeland and St. Petersburg. Has that practice continued?

A. Yes, we do that occasionally.

Q. What is the occasion for such a practice, for such

an occurrence?

A. Why do we do it?

Q. Yes.

A. They are small branches and it doesn't pay to stop a car.

Q. By whose truck are the goods delivered to the St. Petersburg and Lakeland Branches?

A. Their trucks.

Q. Their trucks come in here and pick them up?

A. Yes.

Q. Are the orders of those branches ever merged or sent in with the orders of your branch?

A. We pool cars. Where there is an item that we want to buy a car of you mean?

Q. That's right.

A. And it takes all three branches to make the car.

Q. That's right.

A. Yes, sir.

Q. Are there any other cases where the orders of the Lakeland and St. Petersburg Branches are merged or pooled with you for less than a car?

A. No, sir.

Q. In these cases where small amounts are unloaded here and later trucked to those branches, does that result simply from the fact that they have been loaded in the same car with some of your stuff?

A. No, yes, it was in the same car, yes.

Q. And was it a car which was shipped to you from Jacksonville or from some point outside the State?

A. Usually outside the State.

Q. How frequently do you get in goods of that type for those branches and unload them through your own warehouse?

A. Six or seven times a year.

Q. For each branch?

A. Well, they would both come in the—

Q. Same car?

A. In the same car, yes. I mean it may be half a dozen times a year that there will be something in a car for them.

Q. Mr. Williford, will you state in general the organization in the coarse paper department with reference to personnel?

A. I don't understand your question.

Q. Well, as I understand it, as manager of the branch, you act as manager of the coarse paper department?

A. That is right.

Q. Who is next in line in that department to you?

A. To perform what service?

Q. Any service.

A. I don't know. If you had referred to accounts, it would be the bookkeeper.

Q. Who is that?

A. Mr. Minor.

Q. He also keeps the books in the fine paper, does he not?

A. Yes, sir.

Q. He is general bookkeeper?

A. Yes, sir.

Q. And you have a general cashier?

A. He is the cashier.

Q. He is the cashier and bookkeeper?

A. Yes, sir.

Q. Does he have any assistance?

A. Yes, sir.

Q. How many?

A. One.

Q. Who?

A. Mrs. Frick.

Q. Do you have any clerical employees in the coarse paper department?

A. One.

Q. Who is that?
A. Mrs. Rose Bacardis.
Q. Is she new?
A. Yes.
Q. How do you spell her last name?
A. I don't know.
Q. Would it be something like B-a-c-a-r-d-i-s?
A. That is right, that is close enough.
Q. What became of Mrs. Ten Eyck?
A. I don't know.
Q. When did she leave?
A. I don't remember.
Q. Does Mrs. Bacardis do in general the same type of work Mrs. Ten Eyck formerly did?
A. Yes, sir.
Q. Whom did Mrs. Bacardis succeed?
A. That young lady down there that was the wife of a soldier out at the Field. She didn't stay there long. I don't recall.
Q. Was it Virginia Imel?
A. No, Miss Imel is still there. No, that's right, Miss Imel was there and she went over on the fine paper side. Before that we had the wife of a soldier in there.
Q. In general, does the clerical employees in the coarse paper department do the same thing that Mrs. Ten Eyck used to do when she was there?
A. Generally, yes, sir.
Q. Does that—
A. (Interrupting.) There is one exception though.
Q. What is that?
A. It used to be that Mr. Minor before Mrs. Frick came there and while she was still new most all of them had to get in and help with the bookkeeping, but we have had a good organization so far as the office is concerned for the past, I would say, three years, and they don't bother with the books any more, but other than that it is the same.

Q. Does the clerical employee in the coarse paper department, who is now Mrs. Bacardis, do stenography and typing for you?

A. No, Mrs. Bacardis doesn't do any stenographic work for me.

Q. Who does yours?

A. Miss Imel.

Q. Who is in the fine paper department?

A. That is right.

Q. What is the reason for that?

A. Well, she can take shorthand.

Q. And Mrs. Bacardis can't?

A. No, she is too green at it. I can't be bothered with saying it over too many times.

Q. In the warehouse do you have a coarse paper shipping clerk?

A. Yes, sir.

Q. Does he also act as receiving clerk?

A. Yes, sir.

Q. Who is that now?

A. Julian K. Davis.

Q. Was that job formerly held by J. B. Dupree?

A. Yes, sir.

Q. When did he leave?

A. Last Fall.

Q. Now, is there or not a crew or group of warehousemen in the coarse paper department?

A. Is there a crew?

Q. Or group of warehousemen?

A. Yes.

Q. Warehouse employees in the coarse paper department?

A. Yes.

Q. Are they always confined to coarse paper or do they sometimes help out in the fine paper department?

A. Sometimes they will help in the fine paper department.

Q. Do sometimes the fine paper warehouse employees help in the coarse paper department?

A. Yes, sir.

Q. As the need arises?

A. Yes, sir.

Q. In general, are the duties of the shipping clerk and the warehouse employees the same now as they were at the time of the original trial?

A. The duties?

Q. Yes.

A. Yes, as well as I remember they are.

Q. Can you think of any changes in their duties since the trial, the original trial?

A. I don't recall any.

Q. With reference to the clerical force, have their duties changed any since the original trial?

A. No, other than I outlined a few minutes ago. Generally, it is the same, but we just have a better organization and they just don't need them in the bookkeeping department any more, they used to jump out occasionally.

Q. In the bookeeping?

A. Yes.

Q. But now the coarse paper girl is confined to coarse paper under you and the fine paper girl is confined to fine paper work under the new manager?

A. That's right, except that she takes my letters.

Q. Who is the new fine paper manager?

A. Mr. Sidney Watts.

Q. Sidney Watts?

A. W-a-t-t-s.

Q. How long has he been there?

A. Since December.

Q. 1945?

A. Yes, sir.

Q. In your absence does Mr. Watts act as manager of the establishment?

A. He is out when I am out. We are both out. I suppose he would in an emergency, surely.

Q. When you are out and he is there, does he act?

A. I imagine that he would, yes, sir.

Q. Don't you know, Mr. Williford? Isn't there any understanding or direction given on that?

A. I imagine that he would. We have never had that come up.

Q. When you are both out who is in charge of the coarse paper?

A. I am.

Q. You are still in charge?

A. I am still in charge, that is right. When you say in charge, what do you mean?

Q. Well, who is in charge of the department?

A. They can receive freight and they can ship while I am gone. What is to be done while I am out? What are you talking about?

Q. Do they continue to perform their routine duties?

A. Yes, sir.

Q. Without supervision?

A. Yes, sir.

Q. Who runs the place when you are on a vacation?

A. Mr. Minor usually looks around for it and Mr. Watts.

Q. When you and Mr. Watts are out is anyone specifically left in charge of the fine paper department?

A. Mr. Stewart.

Q. What is his job?

A. I guess you would call him the City desk man or shipping clerk.

Q. Is he the shipping clerk and receiving clerk in the fine paper department?

A. He does some of that, yes, does most of it.

Q. Is there any other shipping clerk in that department?

A. We have a young man back there that does check in freight occasionally.

Q. On the fine paper side you have an extra man that you don't have on the coarse paper, is that true?

A. I wouldn't say an extra man, no, sir.

Q. Who do you have on the coarse paper side that corresponds to Mr. Stewart?

A. None. I see what you mean. I thought you meant in the shipping department. No, sir, our shipping clerk would do about the same duties that Mr. Stewart does so far as taking orders and things of that type.

Q. On the fine paper side you have got two men, Stewart and the shipping clerk?

A. Yes. Well, no, I would say Mr. Stewart makes all of the bills of lading. He does the shipping.

Q. Who is the other man in the shipping department with Stewart?

A. Well, he is in the warehouse, he isn't in the shipping departmnet. Mr. Parker.

Q. Lee Parker?

A. Lee Parker.

Mr. Downing:

That is all.

Cross Examination.

By Mr. Kurz:

Q. Mr. Williford, who passes on credits?

A. Mr. Minor.

Q. Does he handle the cash?

A. Yes, sir.

Q. Is he office manager?

A. Yes, sir.

Q. When you are out of the office who okehs accounts that come in?

A. Mr. Minor.

Q. Does he do that when you are in the office, too?

A. Oh, yes, that is his job, part of it.

Q. Does Mr. Minor have anyone under him?

A. Well, he is office manager. We look to h m to operate the office.

Q. What part of your time is spent out of the office?

A. About half of it.

Q. Will you tell what part of Mr. Watts' time is spent out of it?

A. About the same.

Q. When you are both gone then is Mr. Minor in charge of the office?

A. Yes, he is in charge of the office.

Q. Is he in charge when you are there, too?

A. Yes, sir, that is his responsibility to see that the office runs.

Q. Does he make disbursements of petty cash for bills against the company here?

A. Yes, sir.

Q. He makes all bank deposits?

A. Yes, sir.

Q. And he is generally responsible for the accounts and cash, is that right?

A. Yes, sir.

Q. Who is in charge of the coarse paper warehouse?

A. I am.

Q. You spend your time in the warehouse?

A. Oh, in the warehouse, I didn't get you, Mr. Davis.

Q. What is his title?

A. Shipping clerk.

Q. Is he in charge of the other warehouse crew?

A. Of the other warehouse?

Q. Crew?

A. The men in the coarse paper side?

Q. The men that handle the merchandise, make up the orders?

A. Yes, he operates the warehouse.

Q. Now, Mr. Downing has asked you a good many questions about special orders that are taken for particular customers. In other words, items you do not ordinarily carry in stock and you order specially for someone who may come in and want that particular type of merchandise. How often in the coarse of a week do you have special orders of that kind?

A. From six to twelve times that we order the merchandise, is that what you mean?

Q. For a particular customer?

A. For a particular customer?

Q. Yes.

A. From a half dozen to a dozen times.

Q. That would be one or two a day, then?

A. Yes.

Q. Who would handle those orders?

A. I don't understand that. Do you mean who would order the merchandise?

Q. Who would take the order from the customer?

A. The salesman.

Q. Who would place the order for the merchandise?

A. I would.

Q. Would the merchandise be shipped to the warehouse or direct?

A. Both.

Q. If it came into the warehouse who would handle the receipt of it?

A. Mr. Davis.

Q. And who would handle the delivery of it?

A. The truck drivers.

Q. Are those special orders usually bulky or small in bulk?

A. As a rule they are small.

Q. Could you estimate the time of Mr. Davis and the truck driver that would be consumed in handling all of these special orders? What proportion of the time per day would be consumed in handling those items?

A. This is just the special orders, merchandise that has been printed up or ordered specially for some customer?

Q. Merchandise that has been ordered specially for a customer, or merchandise that has been specially printed for some customer, which would also be specially ordered?

A. How much time per day?

Q. Yes.

Q.[A.] Twenty minutes, and that won't happen everyday.

Q. How does the dollars and cents value of those orders compare with the dollar and cents value of your total volume?

A. I don't know, sir.

Q. Would that be any substantial amount?

A. No, very small.

Q. Could you estimate whether it would be less than 1 per cent or more than 1 per cent of your total volume?

A. Of the total volume?

Q. Yes.

A. I would guess 2 per cent.

Q. Would it be that much?

A. Maybe.

Q. Do you know how much your total sales average during the week?

A. Well, by the month, yes, sir.

Q. Do you know what proportion of that would be special items of the kinds you have mentioned?

Mr. Downing:

Objected to as repetition. He has already answered and given his proportion, given you the proportion. He said 2 per cent.

A. I still understand you. You are talking about specially printed merchandise with the customer's name on it or ordered specially for some customer.

Q. Specially for a particular customer that you do not carry in stock for general customers?

A. And what per cent of dollars and cents?

Q. I am asking you now what per cent of your dollars and cents volume would be represented by those special orders?

Mr. Downing:

Objected to as repetition. He has already answered it.

A. May be 2 per cent, I doubt it.

Q. How many pool cars will you receive during the average monthly period?

A. How many what?

Q. Pool cars, part cars?

A. About one a week.

Q. Who would receive the balance of that merchandise?

A. The balance, our branches, some of the branches that participate in the car.

Q. Would Lakeland and St. Petersburg participate once a week in those?

A. Yes, sir, or Orlando.

Q. You testified on direct that you had pool cars for Lakeland and St. Petersburg about six or seven times a year. Now, which is correct? Do you get one a week, which is 52 a year or six or seven?

Mr. Downing:

Objected to as not a correct summary of his testimony on direct examination. He was testifying there to goods which were unloaded into the warehouse, then delivering by truck to those other two branches.

By Mr. Kurz:

Q. How many pool cars do you get in a course of a year at the Tampa Branch?

A. Let me get what you mean by pool cars. Do you mean that we split with St. Petersburg and Lakeland?

Q. Yes.

A. We will average, I imagine, let me see, we will average one a week. But the question Mr. Downing asked me awhile ago, and that I meant to answer, was how many cars did St. Petersburg and Lakeland haul merchandise out of and I told you about six a year. I am not talking about what they hauled out of now, I am talking about cars that have stopped all along the line.

Q. And that then would go on to St. Petersburg and Lakeland?

A. Yes, sir.

Q. How much time is consumed in the Tampa Warehouse in unloading the Tampa portions of those pool cars?

A. They will average about two hours and a half—two to two and a half hours. Wait a minute, this is just the pool cars?

Q. Yes.

A. They won't go over two hours, the pool cars.

Q. Two hours a week?

A. That is right.

Q. Who handles the unloading of those?

A. Mr. Davis.

Q. And who assists him in it?

A. The warehouse crew.

Q. You testified that items were received from Southern Industries. Do you also receive from them cellophane and bags?

A. Yes, sir, paper bags.

Q. What about glassine bags?

A. Glassine bags, cellophane bags, notion bags.

Q. You get bottle bags from them, don't you?
A. Yes, liquor bags.
Q. How about nail bags?
A. Yes.
Q. How about those cash and carry bags?
A. Yes, I didn't go into every kind of paper bag.
Q. Do you get sacks from them, paper sacks?
A. Yes.

Mr. Kurz:
That is all.

Re-Direct Examination.

By Mr. Downing:
Q. Mr. Williford, in addition to the pool car delivery that Mr. Kurz asked you about. Do you get some goods in full carload lots?
A. Occasionally, yes, sir.
Q. Do you get some deliveries by truck, common carrier truck lines?
A. Not carloads.
Q. I am not asking you about carloads. I mean any deliveries?
A. Yes.
Q. You get some goods by boat?
A. No, sir.
Q. Can you state in general how the greater bulk of your incoming goods are received. By what method of transportation, carload lots, less than carload lots, pool cars or trucks?
A. Less carloads?
Q. I am not referring to less carload lots. Are you referring to pool car shipments?
A. No, sir.
Q. How are lots less than carload lots delivered to you?

A. By truck.

Q. By your own truck or by the—

A. (Interrupting.) No, sir, by carrier's truck.

Q. Is that the Railroad Company truck?

A. It could be.

Q. Does the Railroad Company use the services of any contract on common carrier in making deliveries to you on less than carload shipments?

A. Mr. Downing, I don't understand you. Does the railroad do what?

Mr. Downing:

Read the question.

(Question read.)

A. I don't know.

Q. Do you use your own truck in picking up from railroads any less than carload shipments?

A. No, sir.

Q. Now, when deliveries are made to you by common carriers truck of these less than carload shipments,

Q. Do your employees receive the goods on the platform?

A. No, sir.

Q. Do your employees receive the goods on the platform and truck them into the warehouse?

A. Yes, sir.

Q. And do they then stack them or store them in the warehouse in the space usually allotted to the particular items?

A. Yes, sir.

Q. Now, you were asked about who received these special goods and these other incoming goods and I believe you said Mr. Davis?

A. Yes.

Q. Is he or not assisted by the regular warehouse employees?

A. In checking merchandise in?

Q. In receiving it and getting it into the warehouse?

A. Yes.

Q. As I understand it Mr. Davis does the paper work and the warehouse crew does the manual work, is that correct?

A. Right, yes, sir.

Q. How many pool cars did you get in last week?

A. I don't recall but one.

Q. What about this week?

A. There are three down there this morning.

Q. Do you get any goods by express?

A. Occasionally.

Q. From what sources?

A. You mean what towns?

Q. Whether from within Florida or outside of Florida?

A. No, out of the state.

Q. Now, I want to take one of these special orders that Mr. Kurz asked you about and follow it through in somewhat more detail. As I understand it you are the salesman who takes the order, or I take it it may even be telephoned into the office, may it not?

A. No, sir, it couldn't be, because it is usually printed and there has to be copies gotten. Someone may say they want to place an order but it is very rare for a special order to come in over the telephone.

Q. Do you get other orders than special over the telephone, other than special orders?

A. Oh. yes.

Q. And in who would get those orders over the telepone in coarse paper, who would receive them?

A. I would of Mr. Davis usually.

Q. You are out of the office half of the time, I believe you said?

A. Yes, sir.

Q. And Mr. Davis is in what department?

A. Shipping clerk, coarse paper department.

Q. Is it a part of Mrs. Bacardis' duties to ever answer the telephone?

A. If they were all ringing at one time she would catch it.

Q. Does she therefore occasionally catch an order?

A. Occasionally, yes, sir.

Q. But as I understand it, no special orders would be taken over the telephone?

A. No, sir.

Q. If a special order comes in and say, you order the goods from Jacksonville, who does the typing for you, if any is necessary?

A. I write it in longhand.

Q. Who addresses the envelope to Jacksonville?

A. I suppose Mrs. Bacardis stamps the envelopes, I don't know.

Q. What clerical work does she do?

A. Figuring invoices and extensions, totaling sales principally.

Q. Does she figure invoices on these special orders?

A. Yes.

Q. Does she total sales which includes sales of special orders?

A. Yes.

Q. Does she do such other clerical work that is necessary in case of special orders just as she does on the general run of goods?

A. Yes, they are thrown in with the day's sales and added up and distributed with the various salesmen.

Q. A special order goes to Jacksonville and thereafter, as I understand your testimony, the goods may be shipped direct to the customer or may be shipped to you for delivery. Now, in cases where it is shipped to you is the receiving and getting into the warehouse and

subsequent delivery of the item handled just as in the case of other goods by the shipping clerk or his force, and then by the truck driver?

A. Yes, when it is received it is of course checked in and handled out just as stock merchandise after it gets into the warehouse, if it comes directly to us.

Q. That is what I am getting at. Of course, if it doesn't come direct to you nobody around the warehouse has to handle it?

A. That's right.

Q. Then, Mr. Williford, in what respect does the handling, the routine handling of the paper work, clerical work, relative to a special order differ at all from that given direct to regular goods?

A. Now, you are going to have to explain that to me. I don't quite follow you. Let me see if I understand you?

Q. Well, I have tried to trace through with you the handling given a special order, and I get the impression that it is no different, so far as the paper work goes and the clerical work and the actual physical handling of the goods than you give the ordinary goods. If there is any difference will you explain what it is?

A. Perhaps if I give it to you this way, maybe I could make it clear.

Q. All right, sir?

A. The order is okehed by Mr. Minor for credit.

Q. As you go along will you state in what respect this routine differs from the ordinary goods, the ordinary orders that you receive?

A. In the way I handle it?

Q. The way anybody handles it?

A. Well, there wouldn't be any difference other than the fact that it is ordered special for this customer, and it comes in and we unload it, check it in and send it out with the other orders.

Q. Just like other orders?

A. So far as handling is concerned, yes.

Q. The clerical work that is done is the same as on the other orders?

A. Oh, yes.

Q. Are the bills prepared and statements prepared just as in the case of other orders?

A. Yes, sir.

Q. What employee does that billing and invoicing to the customer?

A. Mrs. Bacardis.

Q. When you and Mr. Watts are both in the office or in the warehouse, I understand that Mr. Minor's job is then to act as cashier and bookkeeper and credit man, is that correct?

A. That is right.

Q. How many persons does he supervise?

A. Four.

Q. And who are they?

A. Mr. Stewart, Miss Imel, Mrs. Bacardis and Mrs. Frick.

Q. Does he have the authority to hire and fire them?

A. Yes, sir.

Q. Does he?

A. Yes, sir.

Q. Do you have the authority to hire and fire them?

A. For the office I have turned that over to him.

Q. Does Mr. Watts have authority to hire and fire?

A. Not the office crew, that is Mr. Minor's job.

Q. Who else has the authority to hire and fire that group you named?

A. In the office job, no one. That is Mr. Minor's work.

Q. Just Mr. Minor?

A. Yes, sir, or if there was something going wrong there and we wanted to make a change, I would get my hands in it too, but it is delegated to him to handle.

Q. In the coarse paper department you have authority to hire and fire?

A. Yes.

Q. Who else does?

A. That is all.

Q. In the fine paper department, I take it, Mr. Watts has authority to fire and hire?

A. Yes.

Q. Who else does?

A. That's all.

Mr. Downing:

That is all.

Re-Cross Examination.

By Mr. Kurz:

Q. Mr. Williford, in connection with the clerical work on these special orders, how much of the time of the clerical force is consumed in the work pertaining to these special orders?

A. The clerical force?

Q. Yes.

A. That is, figuring the invoices, posting it, making statements?

Q. Yes.

A. I would say five minutes a day.

Q. Mr. Downing asked you with reference to who prepared invoices and so forth relating to these special items. Isn't it a fact that you have a form which is filled out at the time the order is taken and one copy would then later be the customer's copy, one copy would go to Jacksonville, and one copy would be used for posting?

A. Yes, sir.

Q. Isn't it a fact that the salesman or whoever takes the order prepares the invoice and the copy from which it is entered on the ledger?

A. The invoice is made at the time of the sale. The information I meant to give Mr. Downing was that all she does is figure the extensions and the addition.

Q. You said Mr. Davis, I believe, and Mr. Stewart are the shipping clerks on the fine paper and the coarse paper departments?

A. Yes, sir.

Q. Do they have any employees who work under their supervision?

A. Yes.

Q. Do they have any authority with reference to the conduct of those employees?

A. No, that is usually handled by Mr. Watts and myself.

Q. Suppose that Mr. Stewart or Mr. Davis found that some of the employees in that department were unfit. What would they do about it?

A. They would talk to Mr. Watts or I, and we would see if we could get it straightened out, and if we couldn't we would just replace them.

Q. Would you pay any attention to their recommendations about matters of that kind?

A. We might depending upon the case, of course. We might consider their recommendations, they having worked with them and working with them every day.

Q. Who actually directs the warehouse crew?

A. Mr. Davis in the coarse paper side.

Q. But he has no authority about the employees at all you say?

A. No, sir, I usually hire and fire for the warehouse crew, although I would take Mr. Davis' recommendation, I would consider it.

Q. In connection with the dollars and cents volume of special orders to your total volume, your answer was 2 per cent, I believe, approximately. Is that correct?

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Volume II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1945

No. 68

[illegible] ADMINISTRATOR OF THE [illegible] UNITED STATES [illegible]

[illegible] COMPANY, ET AL.

[illegible] COURT OF [illegible]

Mr. Downing:

Objected to as repetitious. He testified time and again on cross examination to repeated questions. He has already covered the point.

A. That was a guess.

Q. Did that figure that you had in mind include such items as come from Jacksonville through Southern Industries Company?

A. Oh, yes, all special orders.

Q. And what proportion in dollar and cents value, of your special orders, do come from Southern Industries Company?

A. In dollars and cents?

Q. Yes, in other words, in arriving at this estimate of two per cent—

A. (Interrupting.) I would say 1 per cent of them.

Q. Then, you would say that about 1 per cent would cover out of state orders, is that your statement?

A. Yes, out of the state, yes.

Re-Direct Examination.

By Mr. Downing:

Q. Mr. Williford, in connection with the estimate you have just made and your estimate of the time spent by the clerical force in handling special orders, I understood on re-direct examination you stated that the clerical force and the other employees handle special orders in just the same way as other orders or other goods. Think they do that. Is it or not a fact, that the proportion of time they spend on such work is the same as the proportion of special orders to the other business. In other words, if 2 per cent of the entire business is special order business, would not 2 per cent of the employees time be spent in handling special orders if the routine is the same?

A. 2 per cent of the entire time on special orders?

Q. In view of your estimate that 2 per cent of the total business consisted of special orders?

A. I just don't quite understand yet what you are driving at.

Q. Well, you have estimated that 2 per cent of the total business consisted of special order goods. You have already stated also that the routine in handling them is the same as the other business?

A. Yes.

Q. Would not therefore the proportion of time spent by the employees in handling special orders be in the same proportion?

A. No, no.

Q. Why not?

A. For example, the young lady that figures the ticket. That ticket isn't just laid on her desk by itself. It is laid there with dozens of others and it is a question of extension, and it is gone, and the same way with goods having been received. Ordinarily, it does not necessarily have to come in by itself and be handled by itself. It may be handled with other shipments.

Q. Does it take any longer or less time to extend a special order invoice than it does a regular order, does it take more or less time, or the same time?

A. Well, I would say it would take the same time, yes, the same time, depending on the item.

Re-Cross Examination.

By Mr. Kurz:

Q. Does the clerical force handle all of the matters pertaining to special orders or is part of the special orders handled by the salesmen or by yourself, so that the clerical force will have relatively little work, or less work to do with special orders than they do with other orders?

A. Mr. Kurz, I don't understand you now.

Q. You testified that you or the salesmen make out special orders, that none of them come in over the telephone?

A. That is right.

Q. You also testified that other orders do come in over the telephone?

A. Yes.

Q. Quite frequently?

A. Yes.

Q Isn't it a fact, therefore, that on orders other than special orders the office force would utilize more time than they would on special orders, because of that difference in handling?

A. I still don't quite understand. The special orders, so far as the office help goes, could be figured along with the other tickets. It wouldn't take any longer to figure a special order than it would one that was taken over the telephone. The regular orders come in over the telephone, of course, would be taken by the office force, someone in the office or Mr. Davis, and that is the only time I could see where it would be longer.

Q. The only thing the office force has to do with special orders is to extend the invoice and post it?

A. That is all there is to a special order, yes.

Q. You said you had about one a day, I believe?

A. Special orders?

Q. Yes.

Mr. Downing:

He said six to twelve a week.

A. It will run one or two a day.

Q. How long would it take to extend one or two invoices?

A. Maybe half a minute, a minute, depending on the item.

Re-Direct Examination.

By Mr. Downing:

Q. Does Mrs. Bacardis perform the same duties on a special that she does on regular orders?

A. Oh, yes, in figuring the extensions you mean?

Q. Doing anything to them.

A. Yes.

Q. Is there anything she does to regular orders that she doesn't do to special orders?

A. No.

Mr. Downing:

That is all.

(The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

JULIAN K. DAVIS, a witness called and sworn for and in behalf of the Plaintiff, testified as follows:

603 Direct Examination.

By Mr. Downing:

Q. Will you state your full name?

A. Julian K. Davis.

Q. You are employed by the Tampa Paper Company?

A. Yes, sir.

Q. In what capacity?

A. Shipping clerk.

Q. In what department?

A. In the coarse paper department.

Q. How long have you been so employed?

A. About eight months, it might be ten months. I am not sure about that.

Q. As shipping clerk will you state what the general nature of your duties is?

A. Yes, sir, I receive most of the merchandise either me or my assistant and do all the shipping of the coarse paper in the city and in the country.

Q. Who is your assistant?

A. Tom Walker.

Q. In connection with the receiving of merchandise, is it a part of your duties to check it in from the common carrier when it is delivered?

A. Yes, sir.

Q. Who actually does the physical handling of the goods?

A. Well, anyone that happens to be there including me or any of the truck drivers or the warehouse men.

Q. When you receive a carload or a part carload of pool car, who does the actual physical unloading?

A. Well, generally the truck driver and my assistant, and a lot of times I do it. When we don't have enough men we all jump in and do it.

Q. Do you ordinarily have a crew to call a warehouse crew?

A. No, sir.

Q. You do not?

A. We just have one warehouse man.

Q. Is that Tom Walker?

A. No, sir.

Q. Who is it?

A. Warren Dormany.

Q. Is he the warehouseman of the coarse paper department?

A. Yes, sir.

Q. And is he colored?

A. No, sir, he is white.

Q. Does he work with you and Walker?
A. Yes, sir.
Q. In receiving, checking and unloading shipments?
A. He doesn't check in anything yet, he is a new man down there. He hasn't been there but about a month or so.
Q. Does he do just manual labor?
A. Yes, sir, and we are teaching him to be a shipping clerk.
Q. Do you have any extra labor you employ from time to time?
A. Not at present, no, sir.
Q. Do you help unload?
A. No, sir.
Q. How long since you have employed any?
A. Extra labor?
Q. Yes.
A. Oh, I would say about four months; three or four months.
Q. Who is your superior?
A. Mr. Williford.
Q. Is he in charge of the coarse paper department?
A. Yes, sir.
Q. Did he hire you?
A. Yes, sir.
Q. Can he fire you?
A. Yes, sir.
Q. Did he hire Walker?
A. Yes, sir.
Q. Did he hire Dormany?
A. Yes, sir.
Q. Do you do any hiring or firing?
A. Only of the truck drivers.
Q. The truck drivers?
A. Yes, sir.
Q. Both coarse and fine paper?

A. No, sir, coarse paper.

Q. How many have you ever fired?

A. About one, I think.

Q. Did you have to get Mr. Williford's approval?

A. Well, I had his approval, yes, sir.

Q. In advance?

A. Yes, sir.

Q. In other words, you had already got him to O. K. it before you fired the truck driver?

A. I knew from what this truck driver had done that he would be automatically fired.

Q. What had he done?

A. You just couldn't depend on him any more and he would go out and wouldn't come back.

Q. Now, we mentioned a moment ago pool cars and part cars from railroads. Do you also get in some goods by truck lines?

A. Yes, sir.

Q. And by truck?

A. Yes, sir.

Q. Do the railroads themselves deliver less than carload lots by use of trucks?

A. They have trucklines that deliver to us.

Q. From the—

A. (Interrupting.) From the freight office.

Q. From the Tampa freight offices?

A. Yes, sir, but these truck lines, I don't think they are connected with the railroad in any way—I don't know about that.

Q. Do you sometimes get full carloads by rail?

A. Very seldom.

Q. Can you state, Mr. Davis, by what means of transportation you get the greatest bulk of the coarse paper goods, whether by pool car, full car, truck or less than carload lots?

A. I would say by less than carload lots.

Q. All of that is delivered by the railroad through the use of trucks?

A. No, I am talking about pool cars, stop cars.

Q. Have you got any down there now?

A. Yes, sir.

Q. How many?

A. Three.

Q. About how often do you get in pool cars?

A. Well, that is hard to say. We get in—they just kind of come sometimes in spurts. We will get two or three or four in one week and maybe we won't get any more for a couple of weeks.

Q. Of course you will have to average it, but can you state your estimate of the average per week over a period of time?

A. Well, I would say about two.

Q. A week?

A. Yes, sir, that is the average now. That is not every week.

Q. We understand. And you say you got a full car very seldom?

A. Very seldom, yes, sir.

Q. Where does that come from?

A. A full car?

Q. Yes, sir.

A. Jacksonville.

Q. What sort of goods are in it?

A. Paper bags.

Q. Are they Southern Industries goods?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. Are all of your full cars from Southern Industries?

A. No, sir, once in a while we will get a full car with egg cartons or something like that—not very often—paper cans.

Q. Are those egg cartons ever specially printed for the customer?

A. No, sir.

Q. Who supplies them?

A. I don't know about that, sir.

Q. Do they come from outside the state?

A. I think they do.

Q. Now, as I understand it, these pool cars are cars that have been stopped up the line maybe, at Orlando or Lakeland, and part of the shipment has been taken off?

A. Yes, sir.

Q. You take out more of it here?

A. Yes, sir.

Q. Then the car goes on to St. Petersburg?

A. Yes, sir, sometimes, sometimes we take it all out.

Q. Including St. Petersburg share?

A. Once in a great while, not very often.

Q. Do you sometimes receive stuff here for Lakeland that is later trucked over to Lakeland?

A. Very seldom.

Q. How often do you get in shipments by common carrier truckline?

A. Oh, we will average a couple of those a day, I would say it would average that.

Q. How often do you get less than carload deliveries from the railroad by use of trucks?

A. Oh, wait a minute. That is what I was thinking about.

Q. Shipments that come in all the way by common carrier truck and these less than carload shipments that the railroad sends over to you by truck?

A. I see what you mean. The less than carload shipments would be about two a day.

Q. On the truckline shipments that come all the way by truckline, how often do you get those?

A. We won't average one of those a month, I don't believe.

Q. Do you ever get anything by express?

A. Very seldom.

Q. On the pool car shipments and the full car shipments, do you and the other warehouse employees go into the car to unload?

A. Yes, sir.

Q. When deliveries are made by truck, do you and the Tampa Paper employees do the unloading from the truck?

A. No, sir.

Q. Do you receive the goods on the warehouse platform?

A. That's right.

Q. Then what do you do with them?

A. We check them in, take them inside and put them in stock, check the freight bill.

Q. You go and place them in stock where the remaining items of that particular line are placed in the warehouse?

A. That's right.

Q. You do that in all cases, don't you. Whether you unload the goods from the car or not you have to take them in the warehouse?

A. That's right.

Q. You haven't got enough platforms to leave them out on the platform?

A. No, sir.

Q. Now, after you get the goods into the stock in the warehouse, what are your remaining duties with reference to getting that stock out again?

A. Well, we get the orders and go around and fill the orders and bring it out on the platform and pack it.

Q. You know what special orders are—goods specially printed for particular customers and that come in earmarked for that customer?

A. Yes, sir.

Q. Do you get any of those?

A. Yes, sir.

Q. When you get those do you follow the same routine of putting them in the warehouse in stock?

A. No, sir, we don't put them in stock. We just set them inside of the warehouse.

Q. When you get them inside of the warehouse what do you do with reference to getting them to the customer?

A. We go get the orders out of the office special file if they are in the city we deliver them, if they are in the country we ship them out.

Q. By your truck?

A. No, sir, the truck—by common carrier.

Q. You use a common carrier in making deliveries?

A. To the country.

Q. Don't you have any country trucks?

A. No, sir.

Q. Are all of your deliveries to your coarse paper customers in the country made by common carrier trucks?

A. Yes, sir, and by railroad and express.

Q. Do I understand then that your only truck deliveries are made in Tampa and immediate vicinity?

A. Yes, sir.

Q. By your own trucks?

A. Yes, sir.

Q. After you go to the special file and get special order and check it against the special goods as they come in, what becomes of the special order and the other paper relating to that order?

A. It is handled just like one of the regular sales tickets.

Q. To whom does it go after you get through with it in the sales department, shipping department?

A. It goes into the office.

Q. To whom in coarse paper?

A. Miss Rose generally gets the tickets.

Q. Is that Miss Rose Bacardis?

A. Yes, sir.

Q. Do you know yourself what she does with them?

A. No, sir.

Q. Now, do you and the other warehouse employees spend your entire time in the duties you have already described in receiving and checking shipments, putting them in stock and in getting up orders for delivery?

A. Yes, sir.

Q. And in shipping out the country items?

A. That's right.

Q. Mr. Davis, do you know whether the pool cars that you receive in Tampa originate in Florida or out of the state?

A. I don't know.

Q. What about the full cars—but I believe you have covered that.

A. Yes, sir.

Q. Do the truck shipments over common carrier truck lines originate in this state or outside?

A. Most of the time I think they are in the state.

Q. What about the less than carload shipments which the railroad delivered to you by truck line? Do they originate within this state or outside?

A. I don't know.

Q. Are you in a position to state or estimate the proportion of the coarse paper goods which are received from outside of the state?

A. No, sir.

Q. Now, as I understood your testimony awhile ago, both you and Walker yourselves physically assist in load-

ing and unloading incoming goods where you have no other help?

A. That's right.

Q. Do you also physically assist in wheeling it into the warehouse and stocking it there?

A. Yes, sir.

Q. And placing it in stock?

A. Yes, sir.

Q. Do you also physically yourself assist in getting up the orders for shipment and delivery?

A. Well, sometimes, sometimes I don't. Generally I have my crew there though, when we are getting up the country items.

Q. You mentioned the word "crew". I was trying to find out about that awhile ago.

A. I mean the truck drivers.

Q. You mean the truck drivers?

A. Yes, sir.

Q. Who does the paper work with reference to checking in these shipments and with reference to getting up the order?

A. Me and Mr. Walker.

Q. Who does most of it, you or Mr. Walker?

A. I do right at present.

Q. How much of your time do you spend in the physical work which you have mentioned and in the paper work which you have mentioned?

A. Well, most of it is not in the physical work. The biggest majority of it is paper work.

Q. The majority of it is paper work?

A. Yes.

Q. How much time do you spend supervising?

A. Well, I am in charge of the warehouse the whole time I am there.

Q. I am asking you about actual supervising. Are you supervising anybody when you are unloading a car?

A. They are all under me all the truck drivers and the assistant shipping clerk and warehouse man.

Q. What I am getting at is the time you spend in supervising as compared with the time you spend in physical work and this paper work?

A. Do you mean in checking in the cars like when the merchandise comes in and we stack it inside and check it in?

Q. You do the paper work then, don't you?

A. Yes, sir.

Q. And you do it when the orders are being gotten up, don't you?

A. Most of it.

Q. Can you state how much of your time you spend doing paper work?

A. I would say about eighty percent.

Q. How much time do you spend in doing physical or manual work?

A. About fifteen or twenty per cent.

Q. How much time does that leave you for supervision?

A. Well, I can supervise while I am working.

Q. Do you?

A. Yes, sir.

Q. Are you able to state how much time you actually spend aside from your paper work and your physical work in supervision?

Mr. Kurz:

Objected to on the ground that the witness has already fully answered the question and counsel is just trying to argue with him and lead him into something that won't represent the facts and it is mere repetition.

By Mr. Downing:

Q. Can you state?

A. What was the question again?

Mr. Downing:
Read the question.

(Question read.)

The Witness:
No, I can't answer that.

By Mr. Downing:
Q. What is the farthest limit in and around Tampa to which you make deliveries?
A. In our own trucks?
Q. Yes.
A. About as far as Sulphur Springs and Six Mile Creek.
Q. Do you have any regular schedule of hours, Mr. Davis, for your work down there?
A. Yes, sir, I work from 7:30 in the morning until 5:30 in the afternoon.
Q. Any time out for lunch?
A. Yes, sir, one hour.
Q. How much on Saturday?
A. From 7:30 to 12:30.
Q. Do you sign daily time sheets?
A. Yes, sir.
Q. Do the men under you sign daily time sheets?
A. Yes, sir.
Q. All of them?
A. Wait a minute now I don't know. I don't know about that. I can't answer that question.
Q. Does anybody in your department have the job of seeing to it that the warehousemen sign time sheets?
A. No, sir, it is understood that when they come in of a morning they find the time sheets.
Q. But you have no duties in that connection?
A. No, sir.

Q. Do you always work this exact schedule of hours?
A. Yes, sir, practically all the time.
Q. Do you ever get there before 7:30?
A. I don't ever go to work before 7:30.
Q. What do you do if you get there earlier?
A. I sit down and talk to the boss.
Q. Who is the boss?
A. Mr. Williford.
Q. Do you ever work beyond 5:30?
A. Once in awhile, yes, sir.
Q. What do you do then?
A. What do I do?
Q. Yes?
A. I am generally finishing up the day's work out there.
Q. Are you being assisted by Dormany and Walker?
A. Most of the time, yes, sir.
Q. And the truck drivers?
A. Yes, sir.
Q. They sometimes also work beyond 5:30 then?
A. Yes, sir.
Q. How often?
A. Well, that won't happen—it won't average three times a month.
Q. How late do you work on those occasions?
A. Well, I never work later than 6 o'clock.
Q. Are you paid a weekly salary?
A. Yes, sir.
Q. The same amount every week?
A. Yes, sir.
Q. Did you sign any writing or contract or agreement which specified that you were employed on an hourly basis?
A. No, sir.
Q. Did you sign anything?
A. No, sir.

Q. How much is your salary?
A. $45.
Q. Has it been that from the beginning?
A. No, sir.
Q. How much was it originally?
A. $35.
Q. Did you get more than one raise to get $45?
A. No, sir.
Q. When did you get the raise?
A. Well, I had been there about two or three months, I think it was, when I got it.
Q. At the time you were hired or at the time you were raised, was anything said to you about being on an hourly rate?
A. No, sir.

Mr. Downing:
That is all.

Mr. Kurz:
No questions.

(The reading and signing of the Deposition was waived by the witness and by the parties thereto by their counsel.)

(It being 12:15 o'clock P. M. the taking of Depositions was recessed until 1:30 o'clock of the same day at the same place, at which hour it was resumed and proceeded as follows:)

Proceedings.

Mr. Shelton:
The plaintiff will at this time state that, at the hearing to be held in Jacksonville beginning June 17th, we shall move the Court to add to the list of alleged mis-

classified executives in paragraph 7C of the petition the name of Julian K. Davis of the Tampa Branch of Jacksonville Paper Company.

R. E. BRYANT, a witness called and sworn for and in behalf of the Plaintiff, testified as follows:

617 Direct Examination.

By Mr. Shelton:

Q. You are R. E. Bryant?

A. Yes, sir.

Q. Will you state when you began working for Tampa Paper Company?

A. I worked for them once in 1939 and part of 1940.

Q. Then did you come back to work for them a second time?

A. Yes, sir.

Q. When did you start working the second time?

A. In '43, as close as I can recall.

Q. Do you remember about what time it was in 1943?

A. I think it was in October.

Q. When did you leave there?

A. In June—I mean February the 12th.

Q. Of what year?

A. Forty-six.

Q. Now the only period of employment that I want to ask you about is your second period of employment. We are not interested in your first period at all. During that second period of employment what was your job?

A. Well, I was driving a truck part of the time.

Q. Did you do anything else?

A. Yes, sir, I cut paper when they didn't have anyone to cut.

Q. Did you do that paper cutting in the warehouse?

A. Yes, sir.

Q. Did you do any other work in the warehouse?

A. Yes, sir.

Q. What warehouse work did you do besides paper cutting?

A. Well I got up orders.

Q. That was orders for customers of Tampa paper?

A. Yes, sir.

Q. Will you state whether or not you had any duties in connection with the receiving of goods at the warehouse that came in, did you handle goods which were coming into the warehouse?

A. Unloaded them out of the car.

Q. Unloaded them out of the car?

A. Yes, sir.

Q. After you got them unloaded did you have any work in connection with placing them in the warehouse or putting them on the shelves or wherever they went?

A. Yes, sir.

Q. Was it a regular part of your job to do those two types of work, that is, to handle the incoming goods coming into the warehouse and goods going out of the warehouse?

A. Yes, sir, help was short.

Q. Help was short and you did both of those jobs right along?

A. Yes, sir.

Q. Now, when you worked down there that second time did you sign in when you came in in the morning?

A. The second time?

Q. Would you sign on a sheet?

A. Yes, sir, we did start signing on a sheet.

Q. Was that when you first started there the second time or after you started?

A. It was after I started.

Q. When you first started the second time was any record kept of your hours?

A. Any record kept of hours?

Q. Yes, the hours you worked?

A. They might have kept them at the office, I don't know.

Q. You don't know anything about that?

A. No, sir.

Q. When you first started the second time you didn't keep a record?

A. No, sir.

Q. But after awhile they did start keeping a record?

A. Yes, sir, they had a sheet you signed.

Q. Was there any change in your hours at the time when you didn't the sheet and the time when you did, or did you keep on working about the same hours?

A. The same hours.

Q. What time did you come to work in the morning from Monday through Friday?

A. We went to work at 8 and got off at 6 and an hour for dinner.

Q. What hours did you work on Saturday?

A. We worked until 1 o'clock.

Q. Coming in at 8?

A. Yes, sir.

Q. That was your regular schedule the whole time from October 1943 to February of this year?

A. No, sir, we changed from 8 to 7:30 in the morning until 5:30.

Q. Did you change your Saturday schedule?

A. Yes, sir, 12:30, I think.

Q. From 7:30 to 12:30 on Saturday?

A. Yes, sir.

Q. But that would have run the same 50 hours that your other schedule ran?

A. Yes, sir.

Q. The whole time you worked there the second time did you always work around 50 hours a week?

A. Always worked from 8 o'clock on Monday morning until 1 on Saturday was the usual time.

Q. Now, when you were down there that second time did you get paid a monthly bonus?

A. Yes, sir.

Q. Do you remember about how much that amounted to?

A. Yes, sir, the first one was $20.11, the first bonus was $20.11 for quite a while, I disremember how long, then it dropped back to $18 and some cents, I don't know exactly the amount.

Q. Was that the net paid you, in other words, was that what you actually got in your pay envelope?

A. That wasn't my pay envelope. That was a monthly bonus.

Q. The bonus was paid once each month?

A. Yes, sir.

Q. You said that you worked on the truck and that you worked in the warehouse, in which job did you spend more of your time?

A. Well, most of my time I spent in the warehouse.

Q. Was that true the whole time you were employed there?

A. Yes, sir.

Mr. Shelton:

Your witness, Mr. Kurz.

Mr. Kurz:

No questions.

(The reading and signing of the Deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

MARIO G. LLANO, a witness called and sworn for and in behalf of the Plaintiff, testified as follows:

620 Direct Examination.

By Mr. Shelton:

Q. Mr. Lano, will you state your full name, please?

A. Mario G. Llano.

Q. You were formerly employed by Tampa Paper Company?

A. Yes, sir.

Q. Do you remember in what month you started working down there?

A. I started in December of 1944.

Q. And when did you leave?

A. November 1945.

Q. During that period did you work down there steadily?

A. Steadily, yes, sir, every day.

Q. Did you get any vacation?

A. No, sir.

Q. Were you out any sick?

A. No, sir.

Q. What was your job down at the—

A. (Interrupting.) I was supposed to be assistant shipping clerk.

Q. Was that your job?

A. Yes, sir.

Q. As assistant shipping clerk what did you do?

A. Well, I put up country orders—first I waited on city trade whoever called in as far as I could and even when I was putting up orders I would have to wait on people, made out bill of ladings, tickets and other things.

Q. I will ask you, Mr. Llano, whether you had any duties with respect to goods coming into the warehouse?

A. Yes, sir, I helped unload the cars.

Q. Will you state whether you kept or helped keep any records with respect to incoming goods?

A. No, sir, well I put them in the books as they came in, in the book that Mr. Williford was copying for the office.

Q. What is that book called?

A. It is called a reference book or rather the cargo in and out, and marked the number of the trains and everything.

Q. Do I understand that that book would show the shipments received and what was received in each shipment for the incoming goods?

A. Yes, sir.

Q. Did that book include goods which came in by freight car and by truck?

A. By truck, both.

Q. Did you receive any express shipments down at the warehouse?

A. Yes, sir, but I didn't bother about those, I didn't put those in the book.

Q. Did you have anything to do with respect to incoming express shipments?

A. No, sir, I never did. The shipping clerk took care of that.

Q. Your duties were restricted to the incoming freight car shipments or incoming truck shipments?

A. Yes, sir.

Q. I believe you also stated a minute ago you helped to handle those incoming goods?

A. Yes, I helped unload the cars, yes, sir.

Q. After those goods were unloaded from the freight car or truck as the case may be, where did they go?

A. We put them up in the warehouse.

Q. Whose job was it to do that?

A. Well all of us worked together.

Q. In other words, you helped on that?

A. Sure.

Q. Will you state whether or not that was a regular part of your job down there?

A. Well, I thought it was my job so I did it.

Q. Now, when you were down there, Mr. Llano, was any record kept of the hours you worked?

A. I guess they were, they paid me every week.

Q. Did you sign in when you came in in the morning?

A. No, sir.

Q. Did you sign out at night?

A. No, sir.

Q. Do you know who, if anyone, kept a record of the hours you worked?

A. Well I didn't know whether—they must have kept them because I got paid like I told you.

Q. How much were you paid?

A. I was paid $27.50 a week.

Q. State whether or not you also received a bonus?

A. Yes, sir, I did.

Q. Did you receive that the whole time you were there or any part of the time?

A. Well, I received it after six months and I began to receive it every month.

Q. Was that beginning in June 1945?

A. Yes, sir.

Q. And you received it every month after that?

A. Yes, sir.

Q. Do you remember what time in November 1945 you left the Tampa Paper Company?

A. I don't know. I think it was around the 8th or the 10th, sometime like that. I don't know exactly the date.

Q. Do you remember whether or not you received a bonus for the month of November 1945?

A. The day after they released me I came back Monday and got my last bonus.

Q. Got your last bonus the day after you left?

A. Yes, sir.

Q. When you were working down there, Mr. Llano, what time did you come to work in the morning?

A. At 7:30.

Q. What time did you leave at night?

A. About 6 o'clock.

Q. Was that on the days Monday through Friday?

A. Yes, sir.

Q. Did you have any time out for dinner?

A. One hour.

Q. What hours did you work on Saturday?

A. Five hours.

Q. When did you come in?

A. At 7:30 in the morning.

Q. When did you leave?

A. 1 o'clock.

Q. That would have been five and a half hours.

A. Well, at 12:30 we would leave on Saturdays. Five hours is what we worked on Saturdays, 50 hours in all.

Q. You worked 50 hours a week?

A. Yes, sir, 9 hours every day.

Q. There were two schedules down there wasn't there, in the beginning you worked from 8 to 6?

A. That's right.

Q. Later you worked from 7:30 to 5:30?

A. Yes, sir.

Q. Both with an hour off for dinner?

A. Yes.

Q. I understand that the whole time that you were there 50 hours a week was your work week?

A. Yes.

Q. Now, during the period, Mr. Llano, when you were working from 8 to 6, will you state whether or not you ever worked after 6 in the afternoon, was there ever anything that required you to work later than that?

A. No, sir.

Q. Now, later you worked from 7:30 to 5:30. During that period did you ever work after 5:30?

A. Once in a while we worked five minutes after, something like that.

Q. Not more than five minutes?

A. No.

Q. When you were employed down there who hired you?

A. Mr. Williford.

Q. Did he tell you how you would be paid?

A. Yes, sir.

Q. What did he tell you?

A. Fifty cents an hour.

Q. He said you would be paid 50¢ an hour?

A. Fifty cents an hour and time and a half for Saturday.

Q. Time and a half for Saturday?

A. Yes.

Q. Did he say anything about paying you time and a half for work over 40 hours a week?

A. He just said—well all over 40 hours he said.

Q. He said you would get time and a half for hours over 40?

A. Yes, sir.

Mr. Shelton:

Your witness

Mr. Kurz:

No questions.

(The reading and signing of the Deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

JAMES STEWART, SR., a witness called and sworn for and in behalf of the Plaintiff, testified as follows:

626 Direct Examination.

By Mr. Downing:

Q. You are employed by the Tampa Paper Company of Tampa?

A. Yes, sir.

Q. How long have you been employed by that Company?

A. About six years.

Q. In what capacity are you employed now?

A. Clerk in the fine paper department.

Q. Who is the manager of the fine paper department?

A. Mr. Sid Watts.

Q. And before that who was manager?

A. Mr. Atkins, E. H. Atkins.

Q. Is Mr. Watts now and was Mr. Atkins formerly in charge of the department?

A. Mr. Watts is in charge of the fine paper department.

Q. And Mr. Atkins formerly was?

A. Formerly was, yes, sir.

Q. Did they do the hiring and firing in the department?

A. Yes, sir.

Q. Does anybody else do hiring and firing in the department?

A. No.

Q. What about the truck drivers in the fine paper department, who hired and fired them?

A. When we need a truck driver we always consult the manager and tell him we have to have one and get his O. K. before we put him on.

Q. Who did the actual hiring, the manager?

A. Well, the manager had us O. K. it before they could be hired. I had to refer to him.

Q. Who did the firing of truck drivers?

A. The manager.

Q. Are you directly yourself under Mr. Watts?

A. Yes, sir.

Q. And were formerly under Mr. Atkins?

A. Yes, sir.

Q. How long have you been a clerk in the fine paper department?

A. Six years.

Q. Are you what is known as the shipping clerk in that department?

A. General utility man, yes, sir. I work at everything, shipping and all.

Q. Do you act as shipping clerk?

A. Yes, sir.

Q. And as shipping clerk do you also check in and receive incoming goods?

A. That's right.

Q. By what means of transportation are incoming goods received?

A. Well, we get them by railroad, by truck, the majority of it comes by rail and is hauled down there by truck.

Q. Are you referring there to less than carload shipments?

A. Yes, sir.

Q. Whose truck hauls such shipments to the warehouse?

A. Well, the Atlantic Coast Line had the American Transfer Company and the Seaboard has the Rogers Transfer Company.

Q. Are there any full car shipments received by rail?

A. Yes, sir.

Q. How frequently?

A. Well, it all depends on when we can get the paper to be truthful about the matter.

Q. How often do you get it in full car loads?

A. Full carloads—the last one we had was about three weeks ago.

Q. And before that?

A. Well I would say about a car every five or six weeks.

Q. Where do those full cars come from?

A. Well, they come from Wisconsin and they come from Ohio and—

Q. Do they come from points outside Florida?

A. Oh, yes.

Q. Do you get any full car shipments from Southern Industries at Jacksonville?

A. No, we don't.

Q. Does the fine paper department get any goods from Southern Industries?

A. Yes.

Q. What?

A. We get envelopes and such stuff as they manufacture up there in Jacksonville, adding machine paper, second sheets.

Q. What else?

A. We get index cards, scratch pads.

Q. Are they all handled in the fine paper department?

A. Yes, sir.

Q. Without trying to specify any more, can you state how many items you receive from Southern Industries?

A. Well, it would be hard to give you an accurate estimate on that particularly in the last year, because paper has been so scarce.

Q. Do you receive a larger or smaller portion now than formerly from Southern Industries?

A. We receive a smaller portion now.

Q. Do you get anything from other manufacturers in Florida other than Southern Industries?

A. No, sir, none that I know of.

Q. Do you ever get in pool or shipments?

A. Well, we get in what we call split cars, they will stop at one destination then come on to Tampa to finish unloading.

Q. Are they cars that have stopped at other Jacksonville Paper branches on the way down from Jacksonville?

A. Yes, sir, they stop at Orlando.

Q. Do any of them stop at Lakeland?

A. No, not fine paper.

Q. Only at Orlando?

A. Only at Orlando.

Q. Do any of those pool cars include fine paper items for St. Petersburg?

A. No, sir.

Q. As I understand it, St. Petersburg has no fine paper department?

A. That's correct.

Q. Does Lakeland have any?

A. No, sir.

Q. How often do you get in such split cars which are stopped at Orlando on the way down?

A. Well, that's a mighty hard question to answer because if we can we try to get a complete car for ourselves otherwise we are glad to get the paper and split it with Orlando in order to get what we can.

Q. Do you make it a practice to pool your orders with Orlando to get up pool cars?

A. No, sir.

Q. Who does the pooling or orders the making up of a split carload?

A. I guess it's done at the mill as far as I understand, if they haven't got sufficient tonnage for Tampa and they

have some for Orlando, they will put it in the Tampa car.

Q. Have you got any split cars down there now to be unloaded?

A. No, sir.

Q. Have you had any this week?

A. No, sir.

Q. Last week?

A. No, sir.

Q. When did you last have one?

A. About three weeks ago.

Q. How often do you get shipments by common carrier truckline?

A. Well, we get LCL shipments every few days, but not by railroad.

Q. I have asked you previously about LCL. I am inquiring now about shipments that have come all the way by truck. Do you get any of those in fine paper?

A. No, sir.

Q. Do you get any shipments by express?

A. That is a great rarity. Maybe once or twice a year.

Q. Now, on LCL's again to go back to those a moment, will you state how frequently you get in shipments of that sort?

A. Well, nearly every day we get in shipments. I will say four or five time a week.

Q. What other employees are there in the warehouse in the fine paper department?

A. Well, we have two white boys back there.

Q. Who are they?

A. Lee Parker.

Q. Who else?

A. And Charles T. Carter, and we have a white truck driver, D. W. Hufstettler and negro Curtis Scott.

Q. Is he a truck driver?

A. No, sir, Hufstettler is the truck driver.

Q. Then Parker and Carter and what was the negro's name?

A. Curtis Scott.

Q. They work in the warehouse, do they?

A. Yes, sir.

Q. Are their duties confined to the coarse paper department?

A. No, sir, the fine paper department.

Q. Do they ever assist in the coarse paper department?

A. No, sir.

Q. As the need arises?

A. No.

Q. Are you entirely certain of that, Mr. Stewart?

A. Well, as far as I know once in a while they may have a car back there where the men may not be working for an hour, and he may go back and help them out, but as a rule they unload their own cars.

Q. Does the truck driver ever assist in unloading?

A. He does when he is not out on the truck, yes, sir.

Q. Does he also do other warehouse work?

A. He works in the warehouse and drives the truck.

Q. Which does he spend most of his time doing?

A. He is out on the truck most of the time.

Q. When shipments come in by railroad, by freight car, who goes into the freight car to unload them?

A. Well, we make up a list of what is in the car and this Lee Parker goes back there and checks it out—previous to his employment I did it myself.

Q. Parker does the actual paper work in getting it checked out of the car?

A. Yes, sir.

Q. Who does the physical, manual work in connection with the unloading and trucking into the warehouse?

A. All of them on the fine paper side except myself.

Q. You don't do any of the manual work yourself?

A. No, sir.

Q. Then Parker does, Carter does and Scott does?

A. That's right, and Hufstettler does if he is there.

Q. On stuff that is delivered by truck is that unloaded by your employees or by the truck drivers?

A. No, sir, they put it on the platform and we move it into the warehouse.

Q. That is done by the same warehouse crew?

A. The same warehouse crew.

Q. Does moving into the warehouse including placing it with the other goods of the same variety?

A. Yes, sir.

Q. Does the warehouse crew also regularly engage in getting up orders for delivery?

A. Yes, sir.

Q. Are your city deliveries made by your own trucks?

A. Yes, sir.

Q. By what means are your out of town deliveries made?

A. By the trucklines, common carrier trucklines.

Q. Does the work of the warehouse crew include preparing the out of town deliveries for shipment?

A. Yes, sir.

Q. Does that include boxing and packaging and wrapping and labeling it?

A. Yes, and making out bills of lading on it.

Q. Is all that done by the warehouse crew?

A. Yes, sir.

Q. Approximately how many different items are carried in stock in the fine paper department, Mr. Stewart?

A. Brother, you got me there.

Q. Are you familiar with the fine paper price book?

A. Yes, sir

Q. Do you know in a general way about how many hundred items are listed in there?

A. I have a general idea in mind, but I would hesitate to tell you, Brother, because we've got—

Q. Is it or not in the hundreds?

A. Yes, sir, it's in the hundreds all right.

Q. Of those hundreds of items how many of them do you get from Southern Industries?

A. Well, as I said before, we get second sheet and adding machine paper and—

Q. You have named over those things specifically. Can you now state the number of items you get from Southern Industries?

A. I would say approximately about 15, maybe.

Q. Does it ever happen that orders will be received from the customers for some of those stock items when you are out of stock?

A. We very frequently get orders that we can't fill.

Q. What happens then, what do you do about it?

A. Well, if we haven't got it we just have to try to tell the customer we are out.

Q. Who does that?

A. I do.

Q. Do you ever place a new order for it?

A. Well, right now we are not making any back orders. We simply write and tell the customer "you better reorder at a later date" paper has been terribly scarce.

Q. Aside from the items that you normally stock do any of your customers ever order items you don't regularly stock?

A. Occasionally, yes, sir.

Q. What do you do about that?

A. We send the order in to Jacksonville and they send it to the mill to be shipped.

Q. What sort of items of that kind do you handle in the fine paper?

A. Occasionally we get an order for a special kind of ink, sometimes we will get an order for a special kind of bond paper, or some specially made envelopes which is sent to the factory to be made.

Q. Which factory?

A. Well, it all depends. We get orders from Logansmith and Brigams and from the Old Colony Envelope Company and some from the American Paper Goods Company.

Q. Are there any other items you order specially for your customers?

A. Once in a great while we used to order special size book paper that comes from Hamilton, Ohio, but that moves a regular car of book paper right from the mill along with other stuff.

Q. But you do order it specially?

A. Not in the last year, but we have in the past.

Q. Do you recall any other items?

A. No, sir, that is about all I can think of.

Q. Did you ever order or do you keep in stock any special size of paper for the Florida Grower Press?

A. Yes, we order special size paper for them.

Q. What special size is it?

A. Well it is label paper that they use thirty nine and a quarter by fifty.

Q. Do you have any other customers who use that exact size?

A. No, sir..

Q. How often do you place orders for that item?

A. Well, we place it as fast as we can get the mill to accept it because they take it as fast as we can get it in here and deliver it to them.

Q. How often do you get it?

A. Well, we get a car from Champion Paper Company, I would say, about every six or eight weeks, something like that.

Q. Do you have in each car some of that special paper for the Florida Grower Press?

A. Not always, no, sir.

Q. Does the Florida Grower Press have a standing order with you for that?

A. They place the order with us, not a standing order, but when they get low we find out if they want some more and they place the order then.

Q. Do you have a special size of newsprint or other paper that you sell the Record Press in St. Petersburg?

A. Yes, sir, a standard size 36x48.

Q. Does anyone else take it in that size?

A. No, sir.

Q. Is that a size which you carry in stock?

A. Thirty six by forty eight, no.

Q. Is it an item which you order specially for the Record Press?

A. That's right.

Q. How often do you do that?

A. Well in the last three months we placed an order for this 36x48.

Q. How often do you place an order for a car?

A. We used to place them once a month but the mill has held that down now to where we can only place it every two months.

Q. Does the Record Press have any standing order with you for paper of that size?

A. No, sir, we find out if they want it then we order it for them.

Q. Are you familiar with the special paper which you supplied to the Peninsular Telephone Company?

A. Yes, sir.

Q. What kind of paper is that?

A. That is 17 inch rolls of 24 pounds straight Atlantic Bond.

Q. How often does the Peninsular Telephone Company place orders with you for that?

A. About twice a year.

Q. How often do you get a supply in?

A. About twice a year.

Q. Do you deliver it all immediately upon receipt?

A. No, sir.

Q. How do you deliver it?

A. We deliver it as they call for it.

Q. Do you sell or deliver any of that to any other customer?

A. No, sir.

Q. What understanding or direction does the Telephone Company give you about how frequently they want that paper?

A. Well, when we begin to see the paper getting low we call them up and tell them about it and they tell us to place another order.

Q. I am thinking now of your deliveries from the warehouse to the Telephone Company?

A. About every three weeks.

Q. How many rolls do you deliver?

A. Two rolls.

Q. How much does one of those rolls weigh?

A. About 225 or 250 pounds.

Q. Do you now supply newsprint or other paper to the Sebring American?

A. Yes, sir, we sell the Sebring American a little newsprint.

Q. Do you sell them any special size not taken by other customers?

A. No, we sell them 24x36 news, and cut it down to a size that runs on their press, but it is a regular standard size newsprint.

Q. A stock item?

A. A stock item.

Q. Other than the Florida Grower Press and the Record Press, do you have any other newspaper customers or print shop customers for whom you order special size paper?

A. We order some 28x40 news for this Spanish newspaper, La Traduccion Prensa.

Q. Is that a size that you normally carry in stock?

A. No, sir.

Q. Do you order it for any other customer?

A. No, sir.

Q. From whom do you order that?

A. From the St. Marie Valley Paper Company.

Q. Does the special paper for Peninsular Telephone and Record Press also come from outside the state?

A. Yes, sir.

Q. Does the Florida Growers print a magazine or newspaper?

A. Yes, sir, they print what is called the Florida Grower Magazine, I think is the name of it.

Q. Do they use your paper for that purpose?

A. No, sir, they don't use our paper for that.

Q. What do they use your paper for?

A. Making labels.

Q. For what?

A. Box end labels that go on the end of orange boxes.

Q. That is for citrus packing houses?

A. Citrus packing houses.

Q. Do they make any other kind of labels out of it that you know of?

A. None that I know of, sir.

Q. Do you know who their main customers are for whom they make citrus labels?

A. No, sir, I couldn't answer that because they sell all these packing houses, sell them these box end labels. It goes on the end of the orange and grapefruit and tangerine boxes.

Q. How often do you order that 28x40 size for the Spanish newspaper?

A. We order it every time we place an order with the mill.

Q. How often is that?

A. Well, as I said awhile ago we have been placing it once a month, but now we have been held down.

Q. What kind of magazine or paper does the Record Press print?

A. They have what they call a shopper's news. It is a give-away paper in St. Petersburg.

Q. Do they use your paper for that?

A. Yes, sir.

Q. In the beginning you mentioned some special ink you order, for whom do you order that?

A. Well, if some printer calls up and orders a certain grade of ink that we don't carry then we send an order in and get it from the factory.

Q. How often do you get orders of that kind?

A. Well, that is spasmodic, it is never frequent with us. I would say maybe three or four times a year we order some special—

Q. You mentioned bond paper you order specially for some customers, for whom do you order that?

A. Well, we had a special order for the Hillsborough Printing Company for bond paper that we don't stock. It was ordered from the mill.

Q. How often do you order that for that company?

A. Well, we have had two orders for it for them, that is not a standing order of any kind, just something special that they wanted.

Q. Do you order that item for any other customer?

A. No, sir.

Q. What did they want with that particular kind of paper?

A. They wanted to have something a little different from our regular standard line of paper.

Q. What did they use it for?

A. Letterheads.

Q. For what customers do you order envelopes especially prepared or printed?

A. Well, that's kind of hard to answer. The last year we haven't been able to get any special envelopes to speak of. We have ordered in the past a few special

made envelopes for the Tampa Shipbuilding Company and occasionally we might order five or ten thousand of some special envelope that we don't stock.

Q. For whom?

A. Well, we got five thousand coming now for the Widere Printing Company at St. Petersburg.

Q. What was special about those you ordered for the Tampa Shipbuilding Company?

A. It is what is called a wax back envelope, a water proof envelope with four brass eyelets in it, that they pinned onto order going overseas so that the contents wouldn't be damaged.

Q. It was intended for overseas duty?

A. Overseas shipments, yes, sir.

Q. How many times have you gotten those envelopes for Tampa Ship?

A. I would say about six times all together, in the last three or four years particularly when the shipyards were—

Q. You also mentioned special book papers. For whom have you ordered those?

A. Special book papers?

Q. Yes?

A. None other than for the Florida Growers.

Q. That was book paper then?

A. That was book paper.

Q. These various special items you have mentioned so far—bond paper, envelopes, special book paper and so forth, were they all supplied and shipped to you for points outside of Florida?

A. Yes, sir.

Q. Do you recall any other instances of special goods of that or similar types?

A. No, I don't offhand.

Q. Can you recall any other customers for whom you have placed orders for goods of those sorts?

A. No, sir.

Q. Now, considering these various special orders as a group, not any one separately, about how often do you have occasion to order or handle a special order item?

A. Well, I don't know. The biggest thing would be that Florida Grower book paper we order for making labels. We order that about once a month. Whenever we find out that the mill will acept the order.

Q. You spoke of the biggest thing. I am thinking in terms of the most frequent. Which is the most frequent?

A. The Florida Growers would be the most frequent.

Q. And largest?

A. And largest.

Q. As I understand it, however, you at all times have in your warehouse some of that special paper for the Peninsular Telephone Company?

A. Yes, sir.

Q. Mr. Stewart, have you ever signed a contract or writing which purported to fix the terms of your employment down there?

A. Me?

A.[Q.] Yes.

A. No.

Q. You never signed any contract with the company?

A. Not that I know of, no, sir.

Q. Did you ever have any understanding with your boss, Mr. Williford or anybody else that you were hired by the hour?

A. I understand that I am on an hourly basis, yes, sir.

Q. Do you know what it is?

A. Yes, sir.

Q. What is it?

A. Fifty four hours a week.

Q. Fifty four?

A. Yes, sir.

Q. That is not what I meant. I am talking about hourly rate of pay—so many cents an hour. Did you ever have any understanding that you were hired by the hour or at so much an hour?

A. Well, I know I am hired by the hour, but to tell you the truth, I never paid much attention about that.

Q. How are you paid?

A. I am paid by the week.

Q. How much a week?

A. Well, it is a little over $40 a week, less deductions for taxes and war bonds that I buy.

Q. Forty odd?

A. I think it is about $41 or $42, I couldn't tell you exactly without going back and looking it up, to be frank with you about that.

Q. While you have been there, during the how many years, six years?

A. Yes, sir.

Q. Have you ever been employed on any basis except on a weekly salary basis?

A. No, sir.

Mr. Kurz:

Objection to the question and move to strike the answer. It is a conclusion. The witness has testified all the way through he was employed on an hourly basis.

Q. Now, you say you understood you were employed for 54 hours a week?

A. Yes, sir.

Q. How long has that been your understanding?

A. Well, it has been my understanding since the wage and hour law went into effect.

Q. How long has it been your understanding that you were employed for 54 hours?

A. Since the wage and hour law went into effect.

Q. Have you worked 54 hours regularly?

A. Practically, yes, sir, all the time.

Q. Let's confine this testimony, for the time being, to the last three years, from June 1, 1943. Has there been any understanding since that time that you were hired at so much an hour?

A. Yes, sir.

Q. How much is it?

A. Well, I can't tell you exactly because I haven't got the exact figures with me, but it averages a little over $40 a week.

Q. I understand that $40 odd is your total pay, but how much is the hourly rate you understand you are employed at?

Mr. Kurz:

Object to that question. The witness has already stated he doesn't recall and that he knows he gets so much a week, and counsel is merely repetitious and building up a large record.

Mr. Downing:

It's larger now.

By Mr. Downing:

Q. Can you answer?

A. Well, about all I can say is I know about what my pay is and my deductions.

Q. Whoever told you that you were paid so much an hour?

A. They told me there in the office, the cashier did, when he was making up the payroll.

Q. Mr. Minor?

A. Mr. Minor.

Q. Did he tell you then what your hourly rate was?

A. He may have, but to be frank with you I don't remember.

Q. Did you understand that you were set up on the company's books at so much an hour for 40 hours and time and a half beyond 40?

A. That's right.

Q. And the whole thing was worked out to your weekly salary?

A. Yes, sir.

Q. And you always work those hours?

A. Yes, sir.

Q. Or approximately those hours?

A. Yes, sir.

Q. What are the hours down there?

A. 7:30 til 5:30 and an hour off for lunch.

Q. How many hours on Saturday?

A. From 7:30 til 12:30.

Q. You have indicated that sometimes you work hours outside of those scheduled. How frequently does that happen?

A. Well, when we are taking inventory we have to work overtime, naturally, we are paid for that.

Q. On what other occasions, if any?

A. Well, when we are there til 6:30 or 7 we show it on the daily time sheet and are paid for it.

Q. Who makes the entries, you?

A. I keep track of the time, yes, sir.

Q. As a matter of fact, isn't it true that you make the entries for a number of the employees down there on the time sheets?

A. I don't make any of the entries. They sign the time sheet themselves.

Q. Did you at one time make the entries?

A. That's correct, yes, sir. They would come in and holler to me that they were there, and I would put it down.

Q. When did you stop the practice of entering it for them?

A. Oh, quite a number of months ago.

Q. How many months?

A. Some time last year. I couldn't answer exactly.

Q. Was that change made as a result of a letter of instruction from the Jacksonville office?

A. Yes, sir.

Q. Do you remember when it came in?

A. It came in some time last year, but I can't recall the exact date.

Q. Was it somewhere around the 1st of January?

A. Well I couldn't answer that.

Q. As a matter of fact, you even signed the initials on the time sheet, didn't you?

A. That's right.

Q. How long was that a practice of yours?

A. Oh for quite a little while.

Q. Well, months or years?

A. Quite a few months.

Q. Was that at the direction of Mr. Watts or Mr. Atkins?

A. No, sir, it wasn't any direction. The boys would stick their heads in the door and say "I'm here", I would look at my watch and put it down, put the time down and put their initials on there. That was my own fault and nobody else's.

Q. Did you do that for the office employees too?

A. Yes, sir.

Q. The girls in the office?

A. Yes, sir.

Q. Had anyone designated to you that job of recording their time?

Mr. Kurz:

Objection to that. It doesn't make any difference who records it so long as it is recorded. It is immaterial and irrelevant.

Mr. Shelton:

You will have to answer.

The Witness:

I didn't understand the question, sir.

(Question read.)

The Witness:

Do you mean anybody individually or do you mean—

By Mr. Downing:

Q. Had Mr. Atkins or Mr. Watts or Mr. Williford delegated that duty to you?

A. You mean to keep the time sheet?

Q. That's right?

A. I can't recall who turned it over to me.

Q. Was it turned over to you?

A. Yes, sir.

Q. In the warehouse, did you keep it on the fine paper employees as well as the coarse paper employees?

A. Yes, sir.

Q. You also kept it on the office employees?

A. Yes, sir, I had one time sheet for the whole outfit.

Q. And you kept it all?

A. Yes, sir.

Q. As a matter of fact, you signed in everybody, didn't you and signed them out?

A. For a while, yes, sir.

Q. During that period, is it or not a fact that what you signed in and out was the regular schedule hours?

A. That's right.

Q. From 7:30 to 5:30?

A. Well, whatever time it was. I don't remember when they changed the time from 7:30 to 5:30. We used to work 8 to 6.

Q. Regardless of that, it was the regular operating schedule that you put down for each?

A. Yes, sir.

Q. To whom did you turn in these sheets after you filled them out?

A. The cashier.

Q. Mr. Minor?

A. That's correct, sir.

Q. Are all of the entries on those sheets during that period in your handwriting?

A. Yes, sir.

Q. You have indicated that the practice ceased some time last year. Can you state any more specifically when the practice started?

A. I couldn't tell you exacty because I really don't remember.

Q. Is Mr. Minor your superior in any respect?

A. Mr. Minor is the office manager, yes, sir.

Q. As office manager does he exercise any supervision over you?

A. Well, I don't know that he does particularly.

Q. What about with reference to keeping the time sheet?

A. He has supervision of that. He naturally has, being office manager and cashier.

Q. During the time you were keeping time was that under his supervision?

A. Yes, sir.

Q. Do you get a bonus?

A. Yes.

Q. Do you know the basis on which it is figured?

A. I couldn't tell you exactly the basis. It amounts to about $22 a month.

Q. You get it each month?

A. Yes, sir.

Q. How long have you been getting it?

A. The last several years.

Mr. Downing:
Your witness.

Cross Examination.

By Mr. Kurz:

Q. Mr. Stewart, with reference to the time sheet, during the time that you kept the record, did you put down the actual time that the employees came in and checked out?

A. Absolutely, yes, sir. If they left at noon they were checked off at noon—whatever time they left.

Q. In other words when Mr. Downing asked you whether you put down the scheduled hours, you put down the hours that the employees actually worked. Is that correct?

A. Actually, sir. I didn't understand just what he was driving at there.

Q. With reference to the less than carload shipments that come in by rail, do you know where they originate, that is, whether some of them come from Jacksonville?

A. No, sir, they come from out of the state.

Q. All of them?

A. Practically all of them. Maybe once or twice a year we might get an LCL shipment from Jacksonville —something we are in a big hurry for.

Q. Isn't it a fact that you get envelopes in LCL shipments?

A. They come in a bag car.

Q. Always in the bag car?

A. Yes, sir.

Q. And that car comes from Jacksonville?

A. Yes, sir. We get envelopes from out of the state that come LCL.

Q. You get some envelopes from out of the state?

A. Oh, yes, quite a few.

Q. How does the volume of items that you get from Southern Industries Company at Jacksonville compare with the total volume of merchandise of that type that you receive?

A. Well, Jacksonville would be much less than what we get from out of the state.

Q. Who handles the orders—who does the ordering?

A. I make up the orders and they are overlooked by Mr. Watts, the manager down there.

Q. In other words you make the requisition for the merchandise that is to be purchased?

A. Make the requisition, yes, sir.

Q. On this merchandise, this paper for the Record Press, 36x48, is that a regular stock size paper?

A. It is a standard size newsprint. It is one that is made regularly by the mill but it is one that we have not carried in a long, long time, though it is listed in our price book.

Q. How often do you order that?

A. We put in an order for it each time we order from the mill. We send an order once a month.

Q. How often do you get an order?

A. We have been getting them about every month until lately, but now we won't get one until the last of this month.

Q. Do you ever use that stock paper for other customers by cutting it to size?

A. No, sir, not in recent years.

Q. Did the company have the Record Press business at all times?

A. Well, they had it for a long, long time and then we got it back again.

Q. How long didn't you have it?

A. I will say for about a year.

Q. When was that?

A. I think we started selling them again along last fall.

Q. For about a year up until last fall that was not ordered?

A. That's right.

Q. Was any of that paper ever cut to 24x36 size and sold other customers?

A. In previous years, but in the last two or three years, no, sir, because we haven't carried it.

Q. Did you have it in the last two or three years—that size paper?

A. When I first went to work for the company they carried a little 36x48 news there. You see, it is a very easy matter to cut it to 24x36.

Q. In the last few years have you always had that 36x48 in stock?

A. No, sir, not in the last couple of years.

Q. When you have had it in stock have you used it to cut it down to 28x36?

A. Occasionally, yes, sir.

Q. Was any of this type of book paper that the Grower Press used sold to other customers?

A. There was about three cases sold to one customer at Sarasota—three or four.

Q. Was that the only occasion it was sold to anyone else?

A. That's the only occasion it was sold to anyone.

Q. You testified about the Florida Growers Press using this paper for labels. How do you know that?

A. That's what it is ordered for and that's what they tell us they order it for, and it is a size that nobody else uses.

Q. But, personally, you haven't seen what use they make of it, have you?

A. I have seen some of the labels.

Q. How do you know they were made from this paper?

A. I couldn't say about this paper recently, no, sir; but that's what they buy it for.

Q. How do you know they buy it for that?

Mr. Downing:

He has answered that and I object to further repetitious questioning of this sort.

Mr. Kurz:

I've got a right to cross examine the witness.

Mr. Downing:

He said they told him so.

Mr. Kurz:

All right, just make your objections and let the Court rule on them.

By Mr. Kurz:

Q. You have never seen it manufactured into labels, have you?

A. You mean this particular paper we are ordering for them now?

Q. Yes.

A. No, sir, I haven't.

Q. Who took the orders for that paper?

A. Mr. Watts.

Q. You said they told you they ordered it for that purpose. Did they talk with you when they made the order?

A. Yes, they talked to me over the telephone about it. They have bought that thirty nine and a quarter by fifty book paper ever since I have been with the Tampa Paper Company.

Q. Then you took the order instead of Mr. Watts?

A. No, he would go out there. I might write up the order to send it into Jacksonville, but he would get the order.

Q. Who told you what they used it for?

A. It's been common knowledge that they've been making labels out of it for years, as far as I know.

Q. But you really don't know what they use it for yourself?

A. Well, actually to see it printed, no, I haven't.

Q. Did you say that this paper for the Hillsborough Printing Company is a special order, a special type of paper?

A. No, sir, it's not a special type of paper, it was a fifty percent rag bond that they wanted something different from what we carried regularly in stock.

Q. It is a regular stock item though, isn't it?

A. It is a stock paper, yes, sir, but it is one that we don't stock regularly. We have never carried it down there in the full sheets. We used to carry a little advocate bond in boxes some years ago.

Q. And there were only two orders of that?

A. There was one order of advocate bond and two orders of delible bond that we ordered specially.

Q. In what period of time?

A. Since last fall. We just got in a shipment the other day for him.

Q. In other words, three orders in about a year?

A. I will say three orders since last October.

Re-Direct Examination.

By Mr. Downing:

Q. Mr. Stewart, do any of your print shop customers print labels for the cigar industry so far as you know?

A. What?

Q. Do any of your print shop customers print labels for the cigar industry so far as you know?

A. Cigar industry?
Q. Yes.
A. I wouldn't be surprised.
Q. Do they obtain from you any book paper or other kinds of papers which are of the right grade for cigar box labels?

Mr. Kurz:
Objected to because it doesn't attempt to connect up this paper with any cigar labels and the witness hasn't even said he knew it was used for that purpose.

A. I know that some of these printers print labels for these cigar factories, but I couldn't tell you what particular paper they bought because it would be regular stock items we would have in stock.
Q. Regular stock papers?
A. Regular stock papers.
Q. When they would get it from you?
A. Yes, sir.
Q. You know they do printing for the cigar industry?
A. Well, it's what I have understood. I couldn't say so personally, offhand.

Mr. Kurz:
I move to strike the answer of the witness on the ground that he has no knowledge of what he is attempting to testify to.

Q. Do you have any newspaper customers other than the Record Press, Florida Growers Press and the Spanish newspaper that you have mentioned?
A. No, sir. We have plenty of newsprint customers, yes.
Q. Who are they?
A. Well, we could have about 20 times more than we've got if we had the newsprint to supply them.

Q. What do they use the paper for?

A. They use the paper for printing newspapers.

Q. Who all are your customers?

A. My friend, it would be mighty hard for me to give you an accurate answer. I can tell you about the majority of them—tell you who some of them are, and this covers both sheet and roll news. We sell the Plant City Courier, the Kissimmee Gazette, the Winter Haven Herald, the Winter Haven Daily News, the Florida Chief Publishing Company at Winter Haven, the DeSoto County Publishing Company at Arcadia. We sell some stuff to the Highlands County News in Sebring, the Avon Park Sun, the Tarpon Springs Leader, the Clearwater News, the Brooksville Journal, the Brooksville Sun. That's about as many as I can recall offhand.

Q. Let's get down around Bradenton and Sarasota. Do you sell to any newspapers down there?

A. No, sir, we don't sell any newsprint around Bradenton and Sarasota except we sell the Bradenton Herald a little sheet news.

Q. What is that?

A. Flat news like you are talking about 36x48 news, I am talking about 24x36 news.

Q. What is it used for?

A. They use it for printing dodgers and circulars.

Q. I asked you earlier about the Sebring American. Is that still a customer?

A. Yes, sir.

Q. Those customers you have just named over, how many of them print daily or weekly newspapers or semi-weekly newspapers?

A. Well, there is not any of them outside of the Florida Chief at Winter Haven I think that have a daily paper. The rest of them are nearly all weeklys or semi-weeklys.

Q. I asked for any newspaper whether daily, weekly or semi-weekly. How many of them print newspapers?

A. They all that I mentioned print newspapers. I left out a few more, if you want them.

Q. What are they?

A. The Haines City Herald, the Polk County Record, the Polk County Democrat. That's about all I can think of.

Q. Do you sell any papers in Lakeland?

A. Once in a great while we will sell the American Printing Company over there.

Q. Does that print a newspaper?

A. I think she has a little weekly newspaper.

Q. As I understand it, it is newsprint you sell those customers?

A. Yes, sir.

Q. And that is newsprint which is used—

A. (Interrupting.) For printing papers.

Q. Newspapers?

A. Yes, sir.

Mr. Downing:

That is all.

Re-Cross Examination.

By Mr. Kurz:

Q. Do these newspapers that you have just mentioned maintain a print shop too?

A. The majority of them do, yes, sir; practically all of them.

Q. Isn't that same type of paper used for printing dodgers, posters and things like that?

A. Yes, sir.

Q. Do you know what part, if any, of this paper you sell them is actually used in printing the newspapers?

A. You mean do I know personally?

Q. Yes?

A. I don't know but I am sure they do use it. I've never seen them actually print the papers but you know a man is not going to buy a roll of newsprint to print dodgers on. Sheet news, he could print dodgers on it.

Q. Is roll newsprint used for anything except printing papers?

A. That's all I know of.

Q. Have you ever been in the newspaper or publishing business?

A. No, I've never been in the job printing business or the newspaper business. I have seen lots of newspaper plants though, if that's what you mean.

Q. You personally have not been in any of these plants, however?

A. Well, I've been in a good many of them at one or other in the last few years or so.

Q. Have you actually seen any of the paper that you sold that the Paper company sold to these concerns used in the printing of the newspapers?

A. Well, now, I couldn't testify to that of my own certain knowledge, no, sir.

Q. You haven't seen it?

A. No, sir.

Mr. Kurz:

I move to strike the testimony of the witness as to the use of this type of paper on the ground it is demonstrated that he does not know and his testimony is only hearsay.

Mr. Downing:

That is all.

Mr. Kurz:

That is all.

(The reading and signing of the Deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

VIRGINIA S. IMEL, a witness called and sworn for and in behalf of the Plaintiff, testified as follows:

655. Direct Examination

By Mr. Shelton:

Q. You are Virginia S. Imel?

A. That's right.

Q. Miss Imel, when were you employed by the Tampa Paper Company?

A. In January 1945.

Q. Have you been employed there steadily since that time?

A. Yes, sir.

Q. Have your duties been the same approximately the whole time?

A. Approximately.

Q. You have had just about the same duties the year and five months that you have been there?

A. That's right.

Q. Will you please state what those duties are?

A. Stenographic and billing.

Q. From whom do you take letters?

A. Mr. Williford.

Q. Anybody else?

A. Mr. Stewart and Mr. Watts.

Q. When Mr. Atkins was there did he used to give you dictation?

A. No.

Q. Have you ever taken letters from anyone except those three men that you mentioned?

A. Mr. Minor.

Q. Mister who?
A. Minor.
Q. Spell that?
A. M-i-n-o-r.
Q. How often do you take letters from Mr. Minor?
A. Not at all now.
Q. But you used to?
A. Yes.
Q. Those four men, that includes everybody that has given you dictation since you have been down there?
A. Yes.
Q. What subject are those letters about that you type, Miss Imel?
A. Stock and merchandise, answering orders.
Q. To whom do the letters go that you type? To whom are they addressed?
A. To the customers and to the main office.
Q. In addition to the letters that you write to the main office, do you write any leters to mills which supply paper to the company?
A. Perhaps a few, not many.
Q. Do you write any letters to the Jacksonville office in connection with the return of merchandise?
A. Not that I recall.
Q. Do you write any letters to the Jacksonville office with respect to social security deduction, withholding tax deductions, or other payroll matters?
A. I don't remember any.
Q. Does anyone take the dictation of Mr. Williford except you?
A. No, sir.
Q. You take all his dictation?
A. Yes, sir.
Q. Do you also take Mr. Watts' dictation?
A. As far as I know, all of it.

Q. I believe you stated that you also did some billing?

A. Yes, sir.

Q. Will you please state what that consists of?

A. Billing the customers for merchandise they have bought.

Q. Do you prepare any forms or vouchers or other papers, other similar papers, down there which are sent to the Jacksonville office?

A. What do you mean?

Q. Well, any forms such as inventory forms or any other type of forms?

A. They get a copy of all the invoices.

Q. All the invoices?

A. Yes.

Q. Do you have anything to do with the taking of inventory or the typing up of inventory?

A. I take it from the stock records and put it on the stock record sheets.

Q. Now, that stock record sheet that you have, you just make an original of that or do you make an original and a copy?

A. There is only one copy.

Q. There is only one copy and where does that go?

A. To Jacksonville.

Q. Do you work in the fine paper department?

A. Yes, sir.

Q. When customers call in on the telephone state whether or not you sometimes take those calls?

A. Sometimes.

Q. If a customer calls in and indicates that he wants to place an order do you take the call yourself usually or transfer it to somebody else?

A. It depends upon what he wants.

Q. What types of orders do you take yourself?

A. Some of the orders for the fine paper department.

Q. Some of those you take yourself?

A. Yes.

Q. And what types of orders do you transfer to someone else?

A. Coarse paper.

Q. To whom do you transfer the calls?

A. The shipping department.

Q. Who is he? Who is the clerk?

A. Mr. Davis.

Q. When you first went to work down there who hired you?

A. Mr. Minor.

Q. Did he tell you how you would be paid?

A. By the hour.

Q. Did he tell you what your hourly rate would be?

A. No, I didn't even ask him.

Q. Did he tell you anything else besides that you would be paid by the hour?

A. That I would approximately $25 a week.

Q. Did he tell you whether or not you would be paid a bonus?

A. I believe he did.

Q. Have you at any time been paid a bonus?

A. Yes.

Q. When did that start?

A. June 1945.

Q. State whether or not you have received that bonus each month since then?

A. Yes.

Q. How much does that amount to, Miss Imel?

A. Close to $6 gross.

Q. $6 gross a month?

A. Approximately.

Q. When you first started to work down there did you sign in in the morning when you came to work?

A. I don't know.

Q. Well now, as a matter of fact, you did not sign in in the beginning, did you?

A. I am not sure whether I did or not.

Q. Miss Imel, will you state whether there was ever a period down there when you did not sign in and out?

A. Occasionally.

Q. Was there a period down there when Mr. Stewart filled in the time sheets for all the employees?

A. I don't know whether he filled them in completely or not.

Q. Well, as best you remember, what did he fill in?

A. Well, I think he—he put in the time and probably signed them for some of the employees.

Q. By "signing", do you mean he put down the initials of the employees?

A. Yes, sir, the initials.

Q. Did he put your initials by your hours?

A. For a time, yes.

Q. For a time he did. Now, at the time Mr. Stewart was putting down those initials and those hours, for you, which you were working, do you know whether or not he was putting down the hours you were scheduled to work on the record?

A. Yes, sir, I think so.

Q. You think he was putting down the schedule hours. Now, during that period did you always work the schedule hours that were shown on the records?

A. It could have been off a few minutes either way.

Q. During that period what was your regular time to come to work in the morning?

A. I believe it was—I don't remember at first, but now it's 8 to 5:30.

Q. Now it's 8 to 5:30?

A. Yes.

Q. You don't remember what your starting hour in the morning was at the time Mr. Stewart was putting down the hours?

A. No, sir, I don't.

Q. Do you remember what your quitting time was at night?

A. Five—Six—5:30 or 6.

Q. State whether or not you would be busier sometimes down there than you were at other times?

A. Yes, sir.

Mr. Kurz:

Objection to that. It is irrelevant and immaterial.

By Mr. Shelton:

Q. When you were busier would you work longer hours than when you were less busy?

A. Not to a great extent.

Q. Would you to some extent?

A. Possibly.

Q. And would the record put down by Mr. Stewart still show the scheduled hours?

A. Yes, sir.

Q. Do I understand from that Miss Imel, that you would sometimes work beyond the normal quitting time?

A. Never more than a very few minutes.

Q. What is the longest time you ever remember working beyond the regular quitting time during that period when Mr. Stewart was keeping the hours?

A. (No response.)

Q. During that period did the warehouse ever take an inventory?

A. Yes, they have taken inventories.

Q. State whether or not you were pretty busy when you were taking that inventory?

A. Yes, sir.

Q. State whether or not that required some extra work?

A. Yes, sir.

Q. During that period did you work beyond your regular scheduled hours?

A. Yes, sir. It was on the payroll.

Q. It was on the payroll. Was it that period when Mr. Stewart was keeping the records?

A. He has always kept it since I have been there.

Q. Right now does he put down your hours or do you put them down?

A. He puts down the hours. I put down the signature.

Q. You put down the signature. By "the signature", you mean your initials?

A. Initials.

Q. When was it you started to put down your initials?

A. I don't recall exactly. It's been some time.

Q. Was it about Christmas that you started doing that?

A. Even before that.

Q. Even before Christmas. Was it a little while before Christmas or a month or what?

A. I would say a month perhaps.

Q. Before that time when you were not initialing was the inventory taken then or has it been taken since that time?

A. I had nothing to do with the inventory previous to that time.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. Miss Imel, did you see the time sheets that Mr. Stewart kept?

A. Yes, sir.

Q. That was during the time when you did not initial them?

A. Yes, sir.

Q. What hours did he put down there, the hours that you actually worked?

A. They were pretty close to what was actually worked. They couldn't have been off more than a few minutes one way or the other.

Q. In other words, the record that he kept was the actual time that you worked, is that right?

A. Approximately, yes, sir.

Q. I beg your pardon?

A. Approximately.

Q. Not more than a few minutes off?

A. That's right, sir.

Q. Did you tell him when you came in to work in the morning?

A. No, sir, he always saw us when we came in.

Q. What?

A. He saw us when we came in.

Q. He saw you when you came in?

A. Yes, sir.

Q. Did he also see you when you went out to lunch?

A. Yes, sir.

Q. And saw you when you came back from lunch?

A. Yes, sir.

Q. And when you left at night?

A. Yes, sir.

Q. And, as far as you know, the hours he put down are, within a few minutes, correct?

A. Yes, sir.

Q. I believe you said when you worked overtime in taking inventory or any other time, that you got additional pay for it, is that right?

A. Yes, sir.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Sheleton:

Q. Miss Imel, it is true, isn't it, that Mr. Stewart spent a considerable part of his time out in the warehouse?

A. Yes, sir.

Q. If he would be out in the warehouse he wouldn't necessarily see you come in or leave, would he?

A. Possibly not a time or two, but usually he would.

Q. What about when you went in and out for lunch? Would he sometimes be in the warehouse then?

A. He was usually in the office around that time.

Q. Miss Imel, were there any occasions during the day when you would be allowed time off to go shopping for Nylons or anything else that came up?

A. I never did.

Q. You never took any time off to shop?

A. No, sir.

Q. Did you ever take any time off during the day for personal reasons like sickness in the family or anything of that sort?

A. No, sir.

Q. Did you ever get an afternoon off for any purpose?

A. No, sir.

Q. Did you get holidays off?

A. We have had some holidays off.

Q. When you got a holiday off did the record show whether you worked or not?

A. No.

Q. Would you ever get a half holiday off like the day before Christmas?

A. I don't know, I think we did. I am not sure.

Q. You say you think you did?

A. I am not sure.

Q. You are not sure. If I told you that at that time when Mr. Stewart was putting down the hours he was showing you as working 48 hours a week would that refresh your recollection about that?

Mr. Kurz:

Objection to that. The witness has already answered, and counsel is trying to impeach his own witness. Furthermore, the question is a repetition of questions that he has asked often, and the record is the best evidence of what the record shows.

Mr. Shelton:

All right, I withdraw the question. Your witness.

Mr. Kurz:

That is all.

(The reading and signing of the Deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

MRS. HATTIE WETLER FRICK, a witness called and sworn for and in behalf of the Plaintiff, testified as follows:

665 Direct Examination.

By Mr. Shelton:

Q. Mrs. Frick, will you state your full name?

A. Hattie Wetler Frick.

Q. When did you start work for the Tampa Paper Company?

A. If you want the year you will have to figure it back.

Q. That is what I want?

A. It will be 7 years on September 15th. Now you figure it back, and you will know the year, because I don't remember.

Q. All of the rest of the questions I am going to ask you about I want you to just limit your answers to the period beginning June 3, 1943, that is about the last three years, in other words.

In the questions from now on I will just be interested in what happened down there in the last three years.

A. All right.

Q. During the last three years will you state what your duties have been down there at the company?

A. I am bookkeeper and assistant cashier.

Q. Do you work in the coarse paper or the fine paper department?

A. The coarse paper department.

Q. During the last three years have you worked all the time in that department?

A. Absolutely.

Q. As bookkeeper and assistant cashier what do you do?

A. I do all the posting and checking up tickets and assembling them and recapping them. I wait on the customers that drop in to buy things for cash, you know, and I pinch hit for the cashier all during the day, if he isn't at his desk I wait on customers.

Q. Do you also operate the bookkeeping machine?

A. Absolutely.

Q. What kinds of work do you do with that machine?

A. I do the posting, the daily items to the accounts of the customers; I post the cash items to the customers accounts, run the trial balances, make statements—just anything that comes along in connection with the bookkeeper's job.

Q. The Tampa Paper Company has a bank account, doesn't it?

A. Not in Tampa.

Q. Do you have a petty cash account?

A. We have had.

Q. You don't have one now?

A. It's handled different now.

Q. When you used to have one who made the payments out of it?

A. Mr. Minor when he was there and I have also made them.

Q. And how are those small cash payments handled now, that you have no petty cash account?

A. Well, we have our daily cash receipts and when a railroad comes in with a freight bill we pay it out of the accumulated cash as it comes in.

Q. When express or truck shipments come in collect who pays the bills?

A. The cashier or the assistant cashier.

Q. In other words, Mr. Minor pays it, but if he is not there then you pay it?

A. I pay it.

Q. Has that been the regular practice right along?

A. Yes, sir.

Q. If he weren't there?

A. That's right.

Q. The posting you do, is that solely of items in the coarse paper department?

A. I also handle the fine paper.

Q. Do you handle all the posting down there or does anybody else do it?

A. I do all of it.

Q. You do all posting of accounts?

A. All posting.

Q. Beginning about three years ago, Mrs. Frick, if you can recall back, were you keeping any record of the hours you worked down there for the company?

A. Three years ago?

Q. Three years ago, yes. Maybe it would be better to start back and I will ask you how you keep them now and work backwards. Let's do that. At the present time is a record kept of the hours you work?

A. Yes, sir.

Q. Who keeps such a record?

A. Mr. Stewart.

Q. When you come in in the morning do you sign the time you come in?

A. Sometimes I do and sometimes I sign an hour later, just as I can, because sometimes there is a truckload to be figured and we don't have time.

Q. But you do sign it in the morning?

A. Yes.

Q. How long have you been doing that?

A. You mean signing?

Q. Signing, yes?

A. Ever since this thing went into effect—how long has it been in effect? Three years or more. I just don't know—I've forgotten.

Q. When you sign now do you put your initials by your signature?

A. Yes, sir.

Q. Was there a time when you did not put your initials by your signature?

A. Sometimes I sign it by my last name and sometimes I sign it by my initials. I don't have any set rule of signing.

Q. Was there a time when anyone else used to write your initials down or your hours?

A. There may be a few occasions when Mr. Stewart used to sign my initials.

Q. As a matter of fact, wasn't the practice down there for him to do it over a considerable period?

A. For a while he did I don't know how long it was but most of the time I know I signed it.

Q. As well as you can remember about how long did that go on—that he did sign the initials and the hours?

A. Oh, let's see. I just don't know.

Q. Was it a considerable period of time?

A. No, I wouldn't say that. It may have been three months—something like that. I don't keep track of that.

Q. I believe when he was here he testified that it was several months. Would that be about right?

A. That would be right, yes.

Q. At that time did you ever look at your record to see what hours he was signing on the record?

A. Oh, yes. I have a set time to check in and to go to lunch and to leave. It's been that way for years.

Q. At the time he was signing in do you know what the scheduled hours were?

A. The time he was signing in?

Q. Yes, the time he was making the record.

A. Well, I believe at that time we worked from 8:30 to 5:30 or 6—I mean 8:30 to 6.

Q. How long for dinner?

A. An hour.

Q. That would have been then eight and a half hours if I figure it right—8:30 to 12 would be three and a half, and 1 to 6 would be five which would be eight and a half hours a day.

A. Well, 8:30, now, understand. That figures 48 hours a week.

Q. Forty eight hours a week?

A. Because Saturday is a short day.

Q. During that period when the schedule was 48 hours a week how many hours were you actually working?

A. Well, let's see. Well, I wouldn't miss 48 very far.

Q. I beg your pardon?

A. I wouldn't miss 48 hours very far. I might have worked 47½ at times and I might have worked 47, but most of the time it was 48.

Q. You say you might have worked 47 sometimes?

A. Yes, sir.

Q. Do you remember when Mr. Charles Carter the wage hour inspector was at the company last fall?

A. Yes, I remember him.

Q. In November?

A. Yes.

Q. And Mr. Carter took a statement from you, didn't he?

A. He worked up some sort of a statement.

Q. I mean he asked you about your hours and took a statement from you?

A. That's right.

Q. Is that your signature (exhibiting paper to witness)?

A. That's my signature.

Q. Before you signed that, Mrs. Frick, did Mr. Carter read that statement back to you?

A. No, he didn't.

Q. He didn't read it back to you?

A. No. I was checking out for lunch and he let me read one he had made up—I think it was Miss Imel's. That same schedule, we were working hand in hand and he said "This will no doubt apply to you too" and I said "Yes, I guess it will".

Q. So you signed what he had written out?

A. Yes. He said "I will just fix one up like that".

Q. Well it says here in the statement that you work 47 hours a week usually. Would that be about right?

A. That's right. Sometimes we would miss it a quarter of an hour and sometimes we would knock off a quarter of an hour at noon in order to get off a little earlier that night.

Q. Do you get a bonus from the company?

A. I do.

Q. About how long have you been getting it? Have you been getting it more than three years?

A. That is right.

Q. How much does that amount to now?

A. It amounts to 22½% of my yearly salary.

Q. How many dollars does each payment amount to, Well, that is not important. How many times a year do you get it?

A. I get it every month, 12 times a year.

Q. You have been getting it consistently the last three years?

A. That's right.

Mr. Shelton:

Your witness.

Cross Examination

By Mr. Kurz:

Q. Mrs. Frick, would you see what time Mr. Stewart put down on the time sheet during the time you did not yourself initial it?

A. Yes, because you see you check in at a certain hour and I'm telling you we're on time. Lots of times when a ticket would be waiting so the trucks could get their tickets and leave we would say "Mr. Stewart, be sure and put us down", because he knew when we came in and he put us down.

Q. Did he know when you went out to lunch?

A. Absolutely.

Q. Did he know when you came back from lunch?

A. Yes.

Q. And when you left at night?

A. Yes, sir.

Q. So far as you know the time he put down on the time sheet is the time you actually worked?

A. That is right, except like I said sometimes maybe we would knock off 15 minutes of our noon hour in order

to get off earlier at night, but we didn't change the set up.

Q. Did he show, actually, the time you left when you left 15 minutes early?

A. No, he would just put it down the regular way, the regular schedule of hours.

Q. Have you seen him do that?

A. Yes, sir.

Q. If you left, say, at a quarter to 12 he would put down 12?

A. I leave at 11:30 and that's the time I go to lunch—from 11:30 to 12:30—and that hasn't changed in the 7 years I have been with the company.

Q. When you left a little earlier or stayed a little late for lunch—

A. (Interrupting) Then we just let it go the regular way.

Q. But you made up that period?

A. That's right.

Q. Either that evening or—

A. (Interrupting) That's right. We just didn't change the set up.

Q. I hand you a time sheet dated April 10, 1945. Will you look at that and see if that is your signature after your name (Exhibiting paper to witness)?

A. No, that's not my signature. That's when Mr. Stewart signed.

Q. Is that the time you actually worked?

A. I mean from 8:20—I said 8:30 but its actually 8:20. We went in at 8:20 in the morning I was in error when I said 8:30. We went to work at 8:20—I had forgotten about that because the schedule is so different now I'm glad you called that to my attention.

Q. In other words your actual time was 48 hours a week then?

A. Forty eight hours a week and we checked in at 8:20 every morning, because in the course of a week it worked out just right.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Shelton:

Q. Mrs. Frick, when you told Mr. Carter you averaged about 47 hours in a normal week that was about right, wasn't it?

A. Well, we were trying to be very honest about it because he was making an investigation but most of the time we worked the full 40 hours; but he wanted a very accurate statement and we thought well we'll allow for maybe 10 or 15 minutes discrepancy going to lunch uptown and missing a car or something you lose 15 minutes, you can't help yourself.

Re-Cross Examination.

By Mr. Kurz:

Q. Did Mr. Carter rather press you about not working the regular time that was on there?

A. No, he said it was just a routine investigation and didn't mean a thing.

Q. Did you tell him you worked the regular hours that were shown on there?

A. Yes, we told him. He said "Well, just make an honest statement" so we did and we did stop and figure it out, just how we worked, and we said "Well, maybe we do lose 15 minutes" if you go uptown and miss a car you can't help yourself.

Q. Did Mr. Carter suggest to you that you might come in late from work once or twice?

A. That was permissible.

Q. No, did he say that you probably did such things?

A. When we were discussing it, yes, we told him how it happened—that sometimes we would lose 15 minutes of actual working time. He said "Well, that doesn't make any difference" he said that ordinarily the organizations allow 15 minutes in the morning and 15 minutes in the afternoon to have a coke so he said "We won't put that down".

Q. So he just practically told you that you didn't work the full 48 hours and you might as well take a little off?

A. He said all organizations permitted 15 minutes in the morning to go out for a coke or something and 15 in the afternoon. He said that was all right that he was just making a routine investigation that didn't mean a thing.

Re-Direct Examination.

By Mr. Shelton:

Q. You were trying to give him the facts as well as you understood them, weren't you?

A. That's right, he wasn't pressing us any.

Re-Cross Examination.

By Mr. Kurz:

Q. Didn't he also tell you that if you worked any extra time that you could get some extra money from the company?

A. Well, no, he didn't say that at all. He said that he figured everything was in order.

(The reading and signing of the Deposition by the witness was waived by the witness and by the parties hereto by their counsel.)

State of Florida,
County of Hillsborough.

I, J. G. Nesbit, a Notary Public of the State of Florida at Large, duly commissioned and quailfied and authorized to administer oaths and to take and certify depositions, do hereby certify that on June 12, 1946, the aforementioned witnesses, Ernest Howell Atkins, J. R. Williford, Julian K. Davis, R. E. Bryant, Mario G. Llano, James Stewart, Sr., Virginia S. Imel and Mrs. Hattie Welter Frick, who were of sound mind and body, were by me first carefully examined, cautioned, and duly sworn to testify to the truth, the whole truth, and nothing but the truth; that they thereupon testified as above set forth; that the depositions were taken down and were reduced to writing under my supervision; that the reading and signing of said depositions by the witnesses was waived by said witnesses and by the said parties by their counsel.

I do further certify that I am not related by blood or marriage nor am I an employee or the attorney or counsel of any of the parties, nor am I a relative of or an employee of said attorneys or counsel or of the aforementioned witnesses, nor am I financially interested in the transaction.

In witness whereof I have hereunto set my hand and official seal this 15th day of June, 1946.

JAMES G. NESBIT,
(Notarial Seal) Notary Public for the State of Florida at Large.

My commission expires May 1st, 1947.

676 GOVERNMENT EXHIBIT 13.

D. Filed Jun. 18, 1946, Jacksonville, Fla., Edwin R. Williams, Clerk.

In the District Court of the United States for the Southern District of Florida, Jacksonville Division.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff,

vs.

Jacksonville Paper Company, a corporation, et al., Defendants.

Depositions of Henry Fleck and Sherman A. Owensby.

#209-J-Civ. United States vs., Jax Paper Co., et al.,

Filed in evidence Jun 18, 1946, Edwin R. Williams, Clerk.

In the District Court of the United States for the Southern District of Florida, Jacksonville Division.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff,

vs.

Jacksonville Paper Company, a Corporation, et al., Defendants.

I, William H. Horne, a Notary Public of the State of Florida at Large and an officer authorized by law to administer oaths, do certify that pursuant to the stipulation of the above parties by their counsel dated May 16, 1946, and filed May ....., 1946, I did on June 13, 1946, at

9:30 o'clock a. m., at Room in office of Pinellas Paper Company, St. Petersburg, Florida, proceed to take the depositions of Henry Fleck and Sherman Owensby, who after being by me first duly sworn, testified as hereinafter set forth, said testimony being on oral examination and being transcribed by me and reduced to writing by me, pursuant to said stipulation.

WILLIAM H. HORNE,
(Notarial Seal) Notary Public.

There were present George A. Downing and James H. Shelton, attorneys for the Plaintiff and Louis Kurz, attorney for the defendants.

Thereupon the following proceedings were had and testimony taken.

679 Thereupon, HENRY FLECK, was duly sworn and testified as follows:

Direct Examination.

By Mr. Downing:

Q. State your full name?
A. Henry Fleck.
Q. Are you employed by the Pinellas Paper Company?
A. Yes.
Q. How long have you been employed by them?
A. July 31, 1941.
Q. In what capacity are you employed.
A. Branch house manager.
Q. How long have you been manager?
A. Since June 3, 1946.
Q. Prior to that time in what capacity were you employed?

A. Branch house cashier.

Q. For how long?

A. July 31, 1941 to June 1st.

Q. June 1st or 3rd?

A. June 1st.

Q. You were cashier during the whole period of your employment down to June 3rd?

A. That is right.

Q. Who was manager of this branch until June 1st?

A. William T. Hood.

Q. How long had he been employed as manager before you were if you know?

A. About 1934 is my recollection.

Q. Who was manager before Mr. Hood?

A. Worked out of Tampa, I understand. A sub branch out of Tampa.

Q. Do you know whether or not at one time Mr. Herbert Mooneyham was manager?

A. No, sir.

Q. Mr. Fleck, by what major transportation do you receive the goods which are distributed by this branch?

A. Means of transportation, they come in here by commercial trucks, that is hauled by truck operators for the Seaboard and the Coast Line.

Q. Do you receive any deliveries by rail car?

A. Yes.

Q. Do you have a siding here?

A. No, sir.

Q. Of the goods which you receive by any car shipments how is delivery made at your warehouse?

A. Pick it up by truck.

Q. What type of rail shipments do you pick up by your own trucks and what type are delivered by trucks supplied by the railroad?

A. Stop off cars which we pick up by our trucks.

Q. Are they what is known as pool cars?

A. Yes.

Q. Are they cars which have been partially unloaded at other branches and sent on here for final unloading?

A. Yes.

Q. At what other branches are these pool cars stopped on the way down?

A. At various branches. Sometimes it is Orlando, Lakeland, and Tampa, and the final destination St. Petersburg.

Q. Where do such pool cars originate, Mr. Fleck?

A. They originate at various mills in the North.

Q. Does St. Petersburg ever get a full carload?

A. From out of the State? No, sir.

Q. Do you ever get a full carload in St Petersburg from Jacksonville?

A. Yes, sir.

Q. The only full cars are from Jacksonville of the Southern industry product?

A. Yes.

Q. How often do you get any pool car shipments?

A. Well, that is sometimes twice a month, and sometimes three times a month.

Q. Do you have any in here now?

A. One now.

Q. How often do you get any rail shipments which are delivered to you by truck furnished by the railroad?

A. Two or three times a week.

Q. They are what might be called less than carload shipments?

A. Right.

Q. Do you receive any shipments which have been transported all the way by common carrier truck? By truck line?

A. I cannot answer that whether it would be all the way, whether they had been relayed on the line.

Q. Let's put it this way. Other than the truck shipments which have been received by rail, do you get any other deliveries by truck?

A. I get some by the Great Southern Trucking Company.

Q. From what point?

A. Georgia.

Q. How often do you get such truck shipments?

A. Well, we have had two this year, now.

Q. How frequently do you get such shipments last year?

A. I would say about one a month.

Q. I don't mean my question to be limited only to Great Southern, but all of any truck line shipments that were received?

A. We receive most of our merchandise by the Great Southern.

Q. And I believe you said they come straight through?

A. As far as I know, they do.

Q. And I believe you say they would average about once every three months?

A. Yes.

Q. In the year?

A. Yes.

Q. Is that approximately normal?

A. Yes.

Q. Do you get any such shipments from points within the state?

A. No.

Q. Aside from the goods which you get from Southern Industries do any of your other goods come from points within Florida?

A. No.

Q. Do you get any goods from Southern Industries except in car load lots?

A. No.

Q. Do you get any goods by express from anyone?

A. Yes, we do.

Q. How frequently?

A. Average twice a month.

Q. And from what point within or without Florida?

A. Without Florida.

Q. Can you state, Mr. Fleck, what proportion of the goods that you distribute are received from out of state points?

A. No, I cannot give you that.

Q. Can you state whether it is more or less than that from within state points?

A. I would say roughly half.

Q. Let's state it this way. What proportion of the goods which you distribute are supplied by Southern Industries?

A. I would say about 35%.

Q. As I understand your testimony previously all the remainder of your goods come from out of the state points?

A. The remainder of the products, yes.

Q. If 35% is correct then 65% comes out of the state points, would that be an approximation?

A. That is an approximation.

Q. Do you feel that you can make any closer estimate than that?

A. I do not because Mr. Hood handled those shipments.

Q. As cashier formerly was it any part of your duty to handle the clerical papers relating to the incoming goods?

A. Yes, I took care of the receiving.

Q. You acted as the receiving and shipping clerk?

A. At times.

Q. And you handled all the clerical work within the office relating to the incoming goods, did you not?

A. Yes.

Q. Does this branch have a fine paper department?

A. No.

Q. They are confined to coarse paper?

A. Yes, coarse paper only.

Q. Do you have a price book furnished by the Jacksonville office for the coarse paper items?

A. Yes.

Q. Are you familiar in a general way with the types of items listed in it?

A. Yes, more or less.

Q. Can you state approximately the number of items listed in that book?

A. No, I would not undertake to state that.

Q. Can you state whether or not the number will run into the hundreds?

A. It will run into the hundreds.

Q. Do you carry in stock all of the goods which are listed in that price book?

A. No.

Q. What proportion of them don't you carry in stock?

A. Specially printed items are not carried in stock.

Q. Are there any other goods in the price book other than the goods that you do not stock?

A. Any other items?

Q. Other than those specially printed that you don't carry in stock?

A. Special items are ordered specially for customers and are not carried in our regular stock.

Q. Does your price book list those special items?

A. No, we have to write to Jacksonville for those prices.

Q. What I am asking you about is this: You have answered that your price book lists items that run into the hundreds, what I am asking you how many of those items do you carry in stock, about what proportion of those items do you carry in stock and you said you didn't carry special items in stock. Are there any other items listed in that book that you don't carry in stock?

A. No.

Q. Now you have said that there are certain special items not listed in the list book and which you have to write to Jacksonville for prices. I understand from that that you have certain customers to whom you supply goods not listed in your price book?

A. That would be listed in the price book but no prices given.

Q. Can you state approximately the number of such special items listed in the price book?

A. You want each item?

Q. No, just the number I think would be sufficient.

A. I think there would be about 10 to 15 items.

Q. Can you state what the chief one for these are, the ones you handle most frequently in St. Petersburg?

A. Printed salesbooks.

Q. All right?

A. And millinery bags.

Q. All right?

A. Printed gum tape.

Q. Any others?

A. Clothing boxes and beverage napkins.

Q. What are those?

A. Cocktail napkins used in the cocktail lounge.

Q. Can you mention any others, Mr. Fleck?

A. Printed guest checks, restaurant checks.

Q. What about ice cream caps or pails?

A. We haven't had any of those since the war in this branch.

Q. Are they still listed in the price book?

A. Not in our regular prices.

Q. What about printed paper caps for paper containers, caps or covers?

A. Printed paper caps or covers?

Q. Yes.

A. None received here in the last four years.

Q. Do you supply any printed paper caps to dairies for milk bottles?

A. No.

Q. What about dry cleaning bags, Mr. Fleck?

A. Printed dry cleaning bags?

Q. Yes.

A. They come out of Southern Industries at Jacksonville.

Q. Do you have an account with Everybody's Hat Shop?

A. Yes.

Q. Do you furnish them with certain articles printed by the manufacturer?

A. Yes.

Q. What items?

A. Millinery hat bags, not since the war though. That is three years now.

Q. Do you recall when Mr. Carter the wage and hour inspector was here last September or October?

A. Yes.

Q. And he talked to you then?

A. Yes.

Q. Did you give him access to the invoices and other records?

A. No, sir, the records are kept in Jacksonville.

Q. I show you a summary and notation of his made of the invoices purported to be made October 8, 1945 of goods shipped from the Waltham Book and Paper Com-

pany from Waltham, Massachusetts for articles printed 3M 1820. Do you recall that item?

A. Yes. I recall the shipment.

Q. What was that?

A. Millinery bags, hat bags.

Q. That was in October 1945, was it not?

A. Yes, they had been in the mail for approximately

A. Yes. I remember the shipment.

Q. For what customers do you order printed salesbooks?

A. You want a list of them?

Q. Yes, if you can supply them.

A. I don't know that I could give you all of them.

Q. Tell us about how many you supply if there are a number.

A. Ten to fifteen.

Q. How frequently do you place orders for printed salesslips?

A. About once a year.

Q. For each of the customers?

A. They usually get a years supply at one time.

Q. By whom were they supplied?

A. Baltimore Sales Books.

Q. That is in Baltimore?

A. Yes.

Q. Is millinery tape ever ordered by you specially printed for customers?

A. Millinery tying tape?

Q. Yes, or any other?

A. Yes.

Q. How many customers do you have for specially printed millinery tape?

A. Three now.

Q. And how often do they place orders with you for that item?

A. Once a year.

Q. Each of them?

A. Each of them.

Q. Do you have any customers for printed shirt wrappers or shirt bands?

A. Yes.

Q. How many?

A. Six customers.

Q. How frequently do they order?

A. 12 to 18 months apart.

Q. Each of them?

A. Yes.

Q. Do any of your customers order specially printed envelopes?

A. Mailing envelopes?

Q. I am thinking especially of brown envelopes for Webbs?

A. We call them notion books.

Q. How many customers do you have for that type of item?

A. Webb is the only one on that item there.

Q. Are there any other customers who order specially printed envelopes or notion books of any kind?

A. Yes, but we have not been able to get any during the war years from the sources of supply we were getting them from.

Q. Where were you getting them before?

A. Pacific West Paper Company.

Q. Do you have any orders in now?

A. No.

Q. How often do you order specially printed notion books for Webb?

A. About once a year.

Q. Does Webb order from you any other specially printed or other special items?

A. Yes, coffee books.

Q. How frequently?

A. About every 8 or 12 months.

Q. Have you any other customers that order that item?

A. Yes.

Q. Who?

A. Intercity Coffee Company.

Q. Any others?

A. No.

Q. How often does Intercity Coffee Company order them?

A. We have their initial order now, the first one.

Q. Do you have any understanding for periodic renewals of the order?

A. Yes.

Q. How frequently?

A. About once every 12 to 18 months.

Q. Do you have any other customers for periodic deliveries of that or any other kind?

A. Yes, once a year.

Q. With whom?

A. Rutland's Mens Store.

Q. What items?

A. For printed paper.

Q. What kind of printed paper?

A. Lavender roll paper.

Q. Wrapping paper?

A. Yes, with the name imprinted.

Q. Who prints that for you?

A. Pacific Northwest.

Q. Do you have any other customers that you have standing orders with?

A. Rutland Brothers, Inc.

Q. How many of these Rutlands are there?

A. The men's store and the department store.

Q. You have standing orders for both?

A. Yes.

Q. What does the other have printed?
A. Millinery boxes.
Q. Are they specially printed also?
A. Yes.
Q. How often do you make deliveries of that?
A. Once a year.
Q. Other than these specialty items are there any other customers who place with you standing orders for periodic deliveries on stock items?
A. Stock items?
Q. Yes?
A. No.
Q. Do you have any other standing orders for special items?
A. Not that I can recall.
Q. Do you have any orders calling for periodic deliveries?
A. Stock items or printed items now?
Q. Either?
A. Yes, we do.
Q. Who are they?
A. Webbs on paper cups.
Q. What is the understanding?
A. That we deliver them 25 cases every time.
Q. How frequently?
A. About every three weeks, two or three weeks.
Q. How many cups are in 25 cases?
A. 25 cases?
Q. Tell me how many in one case?
A. Two and a half thousand.
Q. Twenty five hundred?
A. Yes.
Q. Are those paper cups a stock item?
A. Yes.
Q. Do you supply them to other customers?

A. Yes, seasonal accounts.

Q. What do you mean by seasonal accounts?

A. During the fruit season.

Q. Does Webbs take them only during the fruit season?

A. No, a yearly contract.

Q. How long have you had that?

A. About 12 months.

Q. Then do I understand that the contract was first made about a year ago?

A. Yes.

Q. Is it just recently been renewed or is it not time for renewal?

A. It is time now for renewal.

Q. Has it been renewed?

A. No.

Q. Have you solicited this renewal?

A. Yes.

Q. With what results?

A. Nothing definite.

Q. Do you have any other similar contracts or understandings with other customers?

A. Yes.

Q. With whom?

A. Suwannee Luncheonettes that is in connection with the Foremost Dairies. That is owned by Sellers.

Q. What is the understanding there?

A. We deliver the cups as needed, 2500 contract.

Q. 2500 cup contract?

A. Of each size, three sizes 6½, 8½ and 10½ ounces.

Q. Is that a stock item?

A. Yes.

Q. Do other customers order those same sizes?

A. Yes.

Q. How long has that understanding been in effect?

A. About a year.

Q. Well now when you speak of 2500, does that mean 2500 a year of each size?

A. No, over a period of 12 months time. There is a shortage of sizes now.

Q. Do I understand that this contract is also on a yearly basis?

A. Yes.

Q. How long have you had that contract?

A. About a year.

Q. Have you solicited a renewal of that one?

A. Yes.

Q. With what result?

A. Nothing definite on this contract either.

Q. Do you have any others of similar type?

A. Hudson Company.

Q. What do you furnish them?

A. Six and 10½ ounces soda cups.

Q. Is that a regular or special item?

A. I would say it is a regular stock item.

Q. Do you carry it in stock regularly?

A. Yes.

Q. Do you supply it from stock regularly?

A. Yes.

Q. Do you furnish the same items to any other customers?

A. Yes.

Q. To whom?

A. Pier Grill.

Q. Why do you say you would call it a regular item?

A. A regular stock item we carry in our stock.

Q. Does your price book carry a price on it?

A. Yes.

Q. How long have you had that contract?

A. About three months.

Q. What period of time does it cover?

A. With this customer as long as our prices are in line.

Q. What is the understanding with reference to the number of items and the time of delivery?

A. Per customer would that be?

Q. No, for Hudson's?

A. Once a week.

Q. How many once a week?

A. 10,000 cups; 5,000 6 ounce and 5,000 10 ounce.

Q. Does your agreement with them extend to other items or not? Periodic deliveries?

A. No.

Q. Have you ever solicited a renewal of this agreement?

A. No.

Q. Have you always made specified deliveries of 10,000 a week?

A. Yes.

Q. Do you have any other similar contracts or understandings with other customers?

A. Foremost Dairies on the same item.

Q. The 6½ and 10½ size?

A. Yes.

Q. For how many?

A. 25,000 up as needed. There is no contract been signed on this.

Q. How often, you say 25,000 as needed, how frequently?

A. They order about twice a month.

Q. Do you deliver twice a month?

A. Yes.

Q. Deliver regularly?

A. No.

Q. Only as they are called for?

A. As they phone the orders in.

Q. You say no contract has been signed on that. How long has the understanding been in effect?

A. About six months.

Q. How long has it been understood the arrangement will last?

A. As long as our prices are in line.

Q. In reference to contracts being signed are these other contracts you mentioned in writing with the other customers other than Foremost?

A. Yes, they are in writing.

Q. Are they still in writing?

A. Yes.

Q. And where are the contracts, the written contracts, are they in this office or are they in Jacksonville?

A. In the Jacksonville office.

Q. Where that type written contract is to expire do you ever receive letters from the Jacksonville office suggesting that you solicit renewals?

A. No, sir, that is left up to the branch house manager.

Q. Is it assumed you will keep up with the expiration dates of these agreements?

A. Yes.

Q. Are there any other such contracts than those you have mentioned?

A. Bailey's Fruit juices.

Q. For what item?

A. Eight ounce cups.

Q. How many of them and how often?

A. 50,000 one delivery.

Q. A week or month?

A. For the season, the fruit season.

Q. When is it understood that that delivery will be made.

A. Between October 1st and 15th.

Q. Is that agreement on the annual basis or some other basis?

A. Seasonal basis.

Q. At what time is the contract made or renewed?

A. At the opening of the season.

Q. For how many seasons or years has that arrangement been in effect?

A. This is the second season. The coming season will be the second season.

Q. Have you solicited the renewal of it?

A. Yes.

Q. With what result?

A. Call back October 1st.

Q. Do you have any other such arrangement with other customers?

A. No.

Q. Now is that Bailey item one which you carry in stock?

A. Yes.

Q. Do you sell it to other customers?

A. Yes.

Q. How many customers do you have for printed millinery bags?

A. About ten.

Q. How many for printed gum tape?

A. About 6.

Q. How many have clothing boxes?

A. Three.

Q. How many have beverage napkins?

A. One.

Q. How many have printed guest checks?

A. Five.

Q. Now, do I understand that these items we have gone over, these are items which are specially printed with the customers name or labels?

A. Yes.

Q. How many of these specially printed items are furnished you by Southern Industries?

A. Millinery bags will be one that we get from them when they get in the production again.

Q. I am talking about at the present time?

A. None.

Q. Some time ago you mentioned dry cleaning bags and said they were printed by Southern Industries?

A. Correct. The dry cleaning bags are furnished by Southern Industries.

Q. As I understood all the other specially printed articles are printed by out of state manufacturers?

A. Those you mentioned.

Q. Are there any others now not mentioned that you have not mentioned so far supplied you from out of state?

A. No.

Q. The ones the you went over some time ago, the shirt wrappers and shirt bands and coffee bags— did they all come from out of the state?

A. Yes.

Q. The millinery tape came from out of the state?

A. Yes.

Q. Now aside from the specially printed items which we have gone over do your customers ever order from you goods which you don't normally carry in stock?

A. Yes, some times.

Q. What are some of these?

A. One item is six inch brown craft paper.

Q. How many customers do you have for that paper?

A. One.

Q. Who are they?

A. The Florida Fishing Tackle Manufacturing Company.

Q. How often do they order that article from you?

A. Once every six months.

Q. Where do you get it from?

A. Crossette Paper Mills.

Q. Where is that? Is it in Florida?
A. No, it is not.
Q. Well, is it in Florida?
A. No it is not in Florida.
Q. Do you have any other such special articles ordered by your customers?
A. Dry wax.
Q. How many customers do you have for dry wax?
A. One.
Q. Who is that?
A. Brownies Bakery.
Q. How often do they order that item from you?
A. Twice a year.
Q. Where do you get it?
A. Patterson Parchment Company.
Q. In or out of Florida?
A. Out of Florida.
Q. Are there any others?
A. Fluted pan liners.
Q. How many customers do you have for it?
A. Six.
Q. How frequently do you receive orders for that item?
A. Once a year.
Q. For each of them?
A. Yes.
Q. Who furnishes them to you?
A. Harvey Paper Products.
Q. Where?
A. Out of the state.
Q. Any other special items?
A. No.
Q. During the war years, Mr. Fleck, have you been able to get a sufficient supply of goods to meet your customer's demands?
A. No.

Q. I am asking you about goods which you normally carry in stock. Because of mercantile conditions do you receive bigger orders than you can fill from stock?

A. Yes.

Q. Has that condition existed up to the present time?

A. Yes.

Q. In other words goods are just about as scarce as they ever were during the war?

A. Yes.

Q. When you receive excess orders, that is orders for your normal supply here what do you do about it?

Mr. Kurz:

Objected to on the ground it is irrelevant and immaterial.

A. We reduce the order.

Q. Do you place orders with the Jacksonville office for an additional supply?

Mr. Kurz:

Can we have an understanding that the same objection applies throughout that line of questioning?

Mr. Downing:

Yes.

A. No.

Q. Why not?

A. Jacksonville allots our pro rata share.

Q. Out of what they are able to obtain?

A. Yes.

Q. You said awhile ago you reduced the order. Do you mean you in turn allot or allocate among your customers the supply which you receive?

A. Yes.

Q. Will you state the basis of that allocation or allotment to your customers?

A. On the basis of what we receive.

Q. Well do you pay attention to the size of the customers order in making that allotment?

A. We allow each salesman their share and they in turn distribute it as they see fit to their customers.

Q. Do I understand it is the salesman that makes the allotment or allocation?

A. From his allocation it is made in the house.

Q. Does he make the allocation at the time he takes the customer's order?

A. That is right.

Q. In other words if the customer wanted 10,000 of a particular item and that was above the amount that the customer had used in the past, would the salesman cut that order proportionately?

Mr. Kurz:

Objected to as leading.

Mr. Downing:

I will withdraw that question and ask you if you know the basis by which the salesman does this allocation?

A. On the basis of volume of business the customer is doing.

Q. As compared with other customers?

A. That is right.

Q. And he proportions that with any allocation made by you?

A. That is right.

Q. As manager here you do some outside selling yourself, don't you?

A. Yes.

Q. Is that the basis on which you do your own allocation among your own customers?

A. Yes.

Q. How long has that custom of proportioning or allocating been in existence here?

A. Since the beginning of the war.

Q. The war began very shortly on December 7, 1941. Is that when you mean?

A. Well I would say a year after that, early in 42 is when merchandise began scarce for us to get.

Q. Early in 1942?

A. Yes.

Q. And I understand it has been in effect since then?

A. Yes.

Q. Has the system remained the same since early in 1942?

Mr. Kurz:

Objected to as repetitious. It has been repeatedly asked if the system was in effect all the way through.

Q. I withdraw that and ask if the basis of allocation has been the same since it started in 1942?

A. Yes.

Q. I would judge from that, Mr. Fleck, that the allocation to the customer is based on the amount of business he was doing at that time in 1942?

Mr. Kurz:

Objected to as leading.

Mr. Downing:

I withdraw the question and will ask you if it is not correct to state that the basis of the allocation was the amount of the business the customer was doing in 1942?

A. Yes.

Q. Mr. Fleck, will you state your organization here in this branch, I believe you are the manager are you not?

A. That is right.

Q. Who is cashier now?

A. Mr. Cecil G. Baltzegar, Jr.

Q. How long has he been cashier?

A. May 24, 1946.

Q. Was he with you before that?

A. No, sir.

Q. Do you have any clerical force?

A. One lady.

Q. Who is that?

A. Mrs. Rosa Lee Bartecki.

Q. How long has she been with you approximately?

A. Approximately a year and a half.

Q. What is the name of her job and her title?

A. Stenographer.

Q. Do you have any other employees in the office?

A. No.

Q. Do you have any warehouse employees?

A. One.

Q. Who?

A. Sherman Owensby.

Q. How long has he been with you?

A. About four weeks.

Q. Did you have a warehouseman before him?

A. Yes.

Q. Who was he?

A. Joseph W. Hornpeck.

Q. How long was he your warehouseman?

A. About two months.

Q. You have a fairly rapid turnover in warehousemen?

A. Yes.

Q. Do you have any contract drivers?

A. One.
A. John Duncan.
Q. How long has he been with you?
A. Two weeks.
Q. Colored?
A. No, white.
Q. Two weeks?
A. Yes.
Q. Who was your contract driver before?
A. Sherman Owensby.
Q. How long was he your contract driver?
A. About three weeks.
Q. I take it you have a rapid turnover of contract drivers also?
A. Yes, he was promoted to warehouseman.
Q. Are you in charge of the establishment here as manager?
A. Yes.
Q. You have authority to hire and fire?
A. Yes.
Q. Who else does?
A. The cashier.
Q. When you were cashier did you have authority to hire and fire?
A. In the absence of the manager.
Q. Mr. Baltzegar has been here only about three weeks? Have you given him the authority to hire and fire?
A. Not as yet.
Q. How much of your time do you spend selling, outside selling I mean by that?
A. Outside selling?
Q. Yes?
A. 75%.
Q. Do you spend any other time out of the office?
A. Yes.

Q. How much more?

A. I would say about 10%.

Q. In what activity?

A. Following up accounts that we are now selling.

Q. You mean in collection work?

A. No, accounts that we are not getting.

Q. You mean soliciting business?

A. Yes that is in the other salesman's territory where they are not getting the business they ought to have.

Q. A sort of gleaning operation?

A. Yes.

Q. How much time did Mr. Hood spend out of the office when he was manager?

A. About the same time.

Q. About 85% of his time?

A. Yes.

Q. Do you have a shipping and receiving clerk?

A. No.

Q. When you were cashier was it or not a part of your duty to act as shipping clerk?

A. It was at times.

Q. When you were not doing it whose job was it, was it not also a part of your job?

A. Yes, it was also a part of my job.

Q. In that part of your duties was it a part of your work to receive and check in all incoming goods?

A. Yes.

Q. Did you do all the paper work in that connection in checking goods against your invoices and so forth?

A. That was done by the manager. In other words, the records were turned over to him.

Q. I am talking about out on the platform. Who does the paper work there when goods are being received?

A. The cashier.

Q. And you did it?

A. Yes, sir.

Q. Did you do any physical or manual acts in connection with unloading the goods or getting them into the warehouse?

A. No, sir.

Q. Who did?

A. We hired extra laborers.

Q. Did you or not hire the regular warehousemen particularly for that purpose when you had one?

A. Partly.

Q. Did you or not use the truck driver for that purpose when he was around?

A. We used him when he was around, yes.

Q. As a matter of fact except when the contract driver was making deliveries did he not spend the remainder of his time in the warehouse usually?

Mr. Kurz:

Object to the question as leading.

Q. I will withdraw and ask it this way. Did the truck driver do anything besides drive the truck in making deliveries?

A. No he assisted the warehouseman.

Q. The warehouseman?

A. Yes, assembling orders.

Q. Did he sometimes assist in unloading incoming goods or getting them into the warehouse and stacking them?

A. Yes.

Q. Did he spend more time on his truck making deliveries or in the warehouse on the other job?

A. On the truck making deliveries.

Q. How much more?

A. 90% of his time was spent making deliveries.

Q. Unloading his truck?

A. 90%.

Q. Do you pay extra labor on extra labor vouchers?
A. Yes.
Q. As cashier did you do all the bookkeeping?
A. No.
Q. Who did the remainder?
A. Mrs. Bartecki.
Q. What portion of the bookkeeping work does she do or did she do when you were cashier?
A. Posting the accounts receivable and credits.
Q. Did you do all the rest?
A. All the closing entries.
Q. I mean other than posting the accounts receivable and credits did you do all the remainder of the bookkeeping here?
A. Yes.
Q. What portion of your time did you spend in doing bookkeeping work?
A. I would say 60%.
Q. How much of your time do you spend in your shipping clerk activities receiving and checking in goods or otherwise preparing them for shipment to customers?
A. Four to five hours per day.
Q. You spent four to five hours a day in the warehouse as receiving and shipping?
A. Receiving and shipping and checking the trucks out.
Q. The remainder of the time did you spend in bookkeeping activities?
A. Not altogether bookkeeping. There was regular routine office work.
Q. Including taking orders?
A. Yes, and taking care of the cash and answering the telephone.
Q. What is the length of the normal working day here?
A. Nine hours, five day, five hours on Saturdays.

Q. Sixty percent of nine is about five and four tenths you indicated you spent sixty per cent of your time on bookkeeping and the rest of the time on other activities in the office. You add that and that makes something over nine. Is your proposition a little bit off somewhere?

A. I never kept a record of my time because I never been a clock watcher.

Q. And according to your best estimate do you think 60% of bookkeeping and office work and 40% on warehouse work is a fair estimate of the division of your time as cashier?

A. I would say yes.

Q. How much of your time in the office did you spend in passing on credits as cashier?

A. In recent years not very much. Most of our accounts pay cash.

Q. What would you mean by not very much. How many minutes of the day, how many hours a week?

A. Approximately 10 minutes a day.

Q. About one hour a week?

A. Yes.

Q. Did you handle the petty cash accounts?

A. Yes.

Q. What was the limit of your authority for the payment of bills out of petty cash?

A. We only have $100 in petty cash.

Q. What was the limit that you could pay in one bill?

A. $10.

Q. Does the manager here receive more pay than the cashier?

A. Yes.

Q. What is the regular schedule of hours in this establishment?

A. Fifty hours.

Q. Beginning when and ending when?

A. 8 o'clock in the morning, ending 6 that night.

Q. And 8 to 1 on Saturdays?

A. Yes.

Q. One hour for lunch?

A. Yes.

Q. Which one of your employees is not signing daily time sheets?

A. Mr. Baltzegar and John Duncan.

Q. When you were cashier did you sign?

A. No, sir.

Q. Did Mrs. Bartecki sign?

A. No, sir.

Q. Is Sherman Owensby the shipping clerk do you have any regular warehousemen?

A. No regular warehousemen.

Q. Does he do all the regular warehouse work except when you call in extra labor?

A. Yes.

Q. Except for 10% of the time that the truck driver is in?

A. Yes.

Q. Does Owensby keep a record of the time he works?

A. Not to my knowledge.

Q. Do you?

A. No.

Q. How much of the time that he is in the warehouse does he have assistance?

A. 10% assistance from the truck driver when he is in the warehouse.

Q. How much of the time does he have the assistance of extra labor?

A. It is only in the unloading of cars.

Q. In the overall picture what proportion of the entire time would that take up?

A. We figured approximately 8 hours, 8 to 10 hours a month.

Q. Other than that does he do all the warehouse work?

A. That is placed in the stock, yes.

Q. Who is Owensby's boss?

A. Mrs. Baltzegar, is in charge of shipping and the truck driver.

Q. Is he in charge of that when you are here?

A. Only when I am out.

Q. Does Mrs. Bartecki do any typing here?

A. Yes.

Q. Do you dictate some letters to her?

A. She does not take dictation.

Q. You write them in longhand and she types them?

A. Yes.

Q. I understand that sometimes she assists the cashier to a certain extent in the bookkeeping?

A. Yes.

Q. And what else?

A. The cash.

Q. Does she do the filing?

A. Yes.

Q. Does she do any of the mailing out of invoices to customers?

A. We don't mail any invoices.

Q. How do you get them to the customers?

A. They are left with the delivery of the merchandise.

Q. Who sends out the statements of the balances to the customers?

A. The statements at the end of the month?

Q. Yes?

A. They are taken out by the salesman at the end of each month. He takes them at the time he calls.

Q. Who prepares the statement?

A. Mrs. Bartecki.

Q. From the accounts receivable ledger?

A. Yes.

Q. Does she also wait on customers and answer the telephone?

A. Yes.

Q. Does she take orders over it?

A. Yes, over the telephone.

Q. Does she take orders from the customers who call here at the office?

A. In the absence of the cashier at the lunch hour.

Q. Mr. Fleck, did any of the employees here sign contracts or writings establishing the terms of their employment when they were hired?

A. Contracts?

Q. Or any other writings indicating the terms on which they were employed?

A. Employment notice?

Q. Was that an application?

A. Notice that was given their schedule hours per week and the wages they would receive.

Q. You have these on file here?

A. In Jacksonville.

Q. Do you have copies on file here?

A. Yes, we have copies.

Q. Would you mind producing one on Mrs. Bartecki as an example?

A. (The witness produces paper and hands to attorney.)

Q. Which of your employees signed the employment notice on the green form that you have produced here?

A. All employees.

Q. Does that include the cashier?

A. The cashier.

Q. Does it include you as manager?

A. No, sir.

Q. When you were made manager did you sign a new one?

A. Not an employment notice.

Q. Is this the only paper which the employees signed which includes the terms of the employment?

A. The schedule hours notice.

Q. Where is that? Do you have that schedule here, notice on one of the other employees?

A. Here is a copy of it.

Q. The form which you have produced on Sherman Owensby appears to be a notice that the schedule hours have been changed, is that correct?

A. Yes.

Q. Is there a separate schedule of hours notice taken at the time of the original employment?

A. Yes it was sent to Jacksonville.

Q. Was that the form like the notice you show on Owensby where the hours were changed?

A. Yes the same form.

Q. Did those original notices schedule the same number of hours named in the employment notice?

A. The regional employment notice yes.

Q. You have mentioned the schedule which is followed in this office. Does it ever happen that the employee sometimes works beyond their scheduled hours?

A. In the tourist season, yes.

Q. When they do what record is made of that?

A. The record is on the daily time sheet and they are paid at the end of the week through extra labor payrolls.

Q. I believe you testified that only Mrs. Bartecki and one other employee signed these daily time sheets?

A. The truck driver.

Q. Mrs. Bartecki and the truck driver?

A. Yes.

Q. What record is made of the hours of work for the other employees in this office?

A. None.

Q. So as to the other employees there is no record of the days they work on regular schedule nor of the days when they work beyond the regular schedule?

A. No.

Q. I get the impression from the employment notice that you exhibited covering Mrs. Bartecki that she does not work a full work week?

A. She does now.

Q. When did she go on a full work week?

A. She is on a 48 hour basis the same as the others on the Jacksonville credit organization.

Q. Instead of coming at 8 she comes at 8:20, is that the only difference from the regular schedule?

A. That is the only difference from the regular schedule.

Q. Does Mrs. Bartecki ever report for work before 8:20?

A. No.

Q. Does she ever work beyond the hour of 6 o'clock?

A. No.

Q. She always takes an hour for lunch?

A. Yes.

Q. When you were cashier how frequently did you work beyond the usual schedule?

A. At the end of the month only.

Q. How much extra time did you put in then?

A. Approximately an hour and a half, closing out final entry on the books.

Q. Bookkeeping work?

A. Yes.

Q. Did Mrs. Bartecki assist you?

A. No.

Q. Does she do any bookkeeping work under Mr. Baltzegar that she did under you?

A. No.

Q. When Mrs. Bartecki was put on the regular schedule of 48 hours did you take a new employment notice from her?

A. No.

Q. Did you issue a new schedule of hours notice to her?

A. Verbal notice.

Q. Verbally only?

A. Yes.

Q. Which of the employees in this office get a bonus, Mr. Fleck?

A. Mrs. Bartecki is the only one last year and myself.

Q. You and Mrs. Bartecki?

A. Yes.

Q That is because the two of you were the only ones had been long enough to qualify?

A. Yes.

Q. Do you know the basis on which the bonus is paid?

A. Yes.

Q. Will you state what it is?

A. Less than one year 15% of the previous years earnings one to four years 20%, five to eight years 22½% and from 8 years 25% is my understanding.

Q. How is that bonus paid to you?

A. Monthly checks.

Q. I understand that the 15% of the previous years earnings is divided into 12 installments and you get one twelfth at the beginning of each month?

A. Correct.

Mr. Downing:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. Mr. Fleck, when these pool cars come in how long does it take to unload them?

A. It depends on the amount of merchandise.

Q. Can you average it?

A. I would say 8 hours over a period of a month's time.

Q. Was any of the less than carload shipments that are delivered by railroad trucks come from Jacksonville?

A. Less than car load?

Q. Yes.

Q. Any less than carload lot shipments that you receive here come from out of the State?

A. Yes.

Q. Did you get any goods from the Jacksonville Paper Company at Jacksonville?

A. Only in our cars.

Q. You didn't get any other shipments to make up other merchandise you may not have on hand? I withdraw that question. The less than carload shipments as I understand it are delivered by railroad company's trucks?

A. Yes.

Q. How are they unloaded?

A. They are unloaded at our platform by their driver and helpers.

Q. How long does it take, on the average, to place these items in stock from the place where they are unloaded by the railroad company's employees?

A. An over all average on that?

Q. If you can give it to a stop at a time? In other words, 30 minutes two or three times a week?

A. Yes.

Q. How much of those less than carload shipments in bulk?

A. From five to fifty percent loads.

Q. How much is the load, how much does it weigh?

A. I would say from 100 pounds up to 2500 pounds.

Q. What would the heavy items consist of?

A. Sales books.

Q. How heavy do these items run in weight, the sales books, I mean?

A. Fifty pounds per carton.

Q. How long would it take to place one of those cartons in stock? Do you handle one carton or would you load a float?

A. Load a float.

Q. How heavy a load would you put on the float?

A. Twenty five cartons.

Q. How long would it take you to place those 25 cartons in stock. to load and to place them in stock?

A. Twenty five minutes.

Q. You said that some of the shipments were a hundred pounds, how long would it take to place those in stock?

A. Five minutes.

Q. With reference to these printed items I believe you said your salesbooks items would be ordered about once a year by each customer?

A. Yes.

Q. How many salesbooks would they order?

A. Five hundred books.

Q. How much would they weigh?

A. About 100 pounds for two cartons.

Q. How long would it take to place these in stock when they are delivered?

A. They are not placed in stock

Q. How are they handled?

A. They are put on the shipping floor.

Q. How long would it take to handle that order through the warehouse?

A. Five minutes.

Q. In other words, if I understand you correctly, it would take about five minutes a year to handle those accounts?

A. Those simple accounts, yes.

Q. How about gum tape, is that a heavy item?

A. It depends on the size of the shipment.

Q. You said you had six customers. How much would those orders run on the average?

A. It would take 10 minutes per customer to run through our warehouse.

Q. I believe you said those were ordered about once a year?

A. About once a year.

Q. What about shirt bands? You said you had six customers for special print shirt bands?

A. Yes.

Q. Are those printed specially for the customers?

A. They are printed specially.

Q. You said you had six customers from a year to a year and a half supply each?

A. Yes.

Q. How long would it take to handle those by the warehouse for each order?

A. Not over ten minutes.

Q. How much time would be spent by your warehouse employees in handling these coffee books for the Interstate Coffee Company or have you had any for that company yet?

A. None for that company yet.

Q. In other words, the orders you have have not been filled yet?

A. No, sir.

Q. What about notion books for Webbs you said you ordered once a year?

A. Yes.

Q. How long would it take to handle that order through the warehouse?

A. Fifteen minutes.

Q. Are these other items that you testified about the same insofar as the handling time is concerned?

A. Yes.

Q. You said that you had contracts for periodic deliveries. Are those contracts in writing say, for instance, Webbs for paper cups?

A. Webbs, I am not certain it is in writing in his office. The matter was handled with Jacksonville.

Q. You know what the terms were?

A. On a million cups a year?

Q. I mean how large an order was it, did you handle it?

A. No, Mr. Hood handled that.

Q. You don't know of your own knowledge anything about it then?

A. No.

Q. You said that you would deliver 25 cases every two or three weeks. Do you have to get an order for these each time?

A. They telephone us.

Q. What do they say then?

A. They just call us and ask for 10 cases each 6 and 8 and 10 ounce cups.

Q. Do you fill them when you get these orders?

A. Yes.

Q. Are they filled out of the stock?

A. Yes.

Q. What about Suwannee Luncheonettes, I believe you said they had a contract for a year's supply. Is that a written contract?

A. Not on Suwannee, it is verbal.

Q. Was it just one order for so many thousand cups?

A. No, it is to be drawn out as needed, 2500 cups as needed for the year.

Q. Are these orders filled out of stock?

A. Yes.

Q. Is that the same type cups you carry in stock regularly for old customers?

A. Yes.

Q. What about the Hudson Company? I notice here they are the same sizes?

A. Yes.

Q. And filled as required out of the stock?

A. Yes.

Q. You said something about an order for cups from Bailey's Fruit Juices. I understand you had one order so far?

A. For last season.

Q. They were all delivered at one time?

A. They were all delivered at one time.

Q. Then you have another contract for fruit delivery, have you?

A. No.

Q. This six inch craft paper that you supply to Florida Fishing Tackle and Manufacturing Company, is that a stock item?

A. No.

Q. How did you get that?

A. I ordered it direct.

Q. Where does it come from?

A. From the Crossette Paper Mills out of the state.

Q. Do you carry six inch craft paper in stock?

A. That is a stock item.

Q. Do you carry any six inch paper?

A. Yes.

Q. What about this paper for Brownies Bakery, how heavy an order is that?

A. A hundred pounds every six months.

Q. You have these fluted pan liners, you have six customers for that?

A. Yes.

Q. Which are once a year?

A. Yes.

Q. How heavy is that?

A. The minimum shipment is of about 150 pounds, 2500 to the shipment.

Q. Do you carry those in stock.

A. No.

Q. Do you carry any fluted pan liners or any pan liners in stock?

A. No.

Q. In regard to these allocations that you testified about that the salesmen make to their customers, do they tell you the basis they use on that?

A. Yes.

Q. Do they have a fixed formula that they apply to everybody?

A. No.

Q. I think you testified that they had a fixed percentage that they would use on all their customers depending on the quota that you got?

A. As the salesmen explained it to us in the office it depends on the stock of the customer at the time he received the short items.

Q. Is it not a fact that these salesmen would judge each order individually and see what the customers needs were and see what he could do to help him out?

A. Yes.

Q. On your direct examination you said that you spent very little time on credits because all the orders were

cash orders. Is it not a fact that you carry monthly accounts and weekly accounts with various customers?

A. Yes.

Q. If the salesmen bring in these orders who passes on the credit of those accounts?

A. I pass on them.

Q. Did you pass on them while you were office manager?

A. Yes.

Q. I believe you also said that you handled all the bank deposits and so forth?

A. Yes.

Q. If the salesman brought in orders that you thought were not justified from the credit standpoint, would you turn them down or send them out C. O. D.?

A. If the account was past due the order would be referred back to the salesman to inquire as to why collection had not been made.

Q. You testified you had a contract with Rutlands for printed wrapping paper?

A. Not a contract.

Q. What was that?

A. It is an order that they reorder each year.

Q. When did they order the last one, place the last order?

A. Approximately a year ago.

Q. Was that order filled?

A. Yes.

Q. Do you have any order on hand?

A. No, we have no order on hand now.

Q. Is it not a fact that you solicit the account each year and they give you an order and has been so in the past?

A. That is my understanding.

Q. They have no binding contract to purchase from you in the future, do they?

A. No.

Q. Is that true about the millinery boxes for Rutland's?

A. The same.

Q. While you were cashier did you have charge of the office and warehouse too while Mr. Hood was away?

A. During his absence and sickness, yes.

Q. During the time he was out of the office?

A. Yes.

Q. What about Mr. Baltzegar, does he have charge of the warehouse too?

A. During my absence.

Q. You were out about 75% of the time?

A. Yes.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Downing:

Q. Mr. Fleck, has Mr. Baltzegar assumed all the duties of a cashier which you formerly performed?

A. Yes.

Q. As I recall your testimony on direct on either hiring or firing you haven't given him authority to hire or fire?

A. Not as yet.

Q. You had that authority when you were cashier, didn't you?

A. Yes, in the absence of Mr. Hood was my statement.

Q. In the absence of Mr. Hood you formerly had the power to hire and fire?

A. Yes.

Q. With reference to the less than carload shipments you said you would receive from 5 to 50% of the load. Did you mean of the carload?

A. That was on less than carload lots.

Q. Did you mean from 5 to 50% of the carload lots?

A. No, we have never received a 50% car here.

Q. I am referring to your testimony on cost. You said less than carload run from 5 to 50% of the load. What did you mean?

A. Of the truckload.

Q. Not of the carload?

A. No, not of the carload.

Q. Now, Mr. Fleck, when this special goods comes in whether they were printed or not when you got them in the warehouse and put them to one side that was the end of it, was it? They are not sitting back there now, are they?

A. The stock items?

Q. No, the special items.

A. No.

Q. What did you have to do with them to get them to the customer?

A. The receiving record was given to the manager and the manager wrote the salesticket and the order was extended and put on the truck and delivered.

Q. Was it necessary to reload them on the truck?

A. Yes.

Q. And then was it necessary to deliver them to the customer?

A. Right.

Q. Do you have any customers outside of the City of St. Petersburg?

A. No.

Q. Are all your deliveries to customers made by your own truck?

A. Yes.

Q. Was the paper work in connection with these special orders any different from that of the stock items?

A. No.

Q. Well now, aside from the fact that the special items were not put in stock was there any difference in the routine in the warehouse or office between the special items and the stock items?

A. No difference.

Q. In referring to one of your contracts or agreements I think you probably were referring to Webbs, you mentioned one million a year, which account was that?

A. That was for Webbs soda fountain department.

Q. One million what, a year?

A. Cups.

Q. To be delivered to them at the rate of 25 cases every three weeks?

A. Yes, sir, or more if needed.

Q. What size cup was that?

A. Three sizes.

Q. What were those sizes again?

A. Six and a half, ten and a half and twelve and a half ounces.

Q. Did the agreement relate to one million of each?

A. No, assorted sizes.

Q. That order related to equal amounts of the three to make up the million?

A. No.

Q. Do you carry a million cups in stock?

A. No, we don't.

Q. As I understand it, Mr. Fleck, you spent 75% of your own time now in selling, in taking orders and selling?

A. Yes.

Q. Because of the shortage of your stock I understand that all orders will accumulate from your customers at the time when there is no stock here to make deliveries from?

A. Orders will accumulate from our customers?

Q. Is that correct or not?

A. Yes.

Q. And when a new bunch comes in do you not allocate the goods to the salesmen taking into account the orders which have accumulated?

A. Yes.

Q. And do you as a salesman take into account in allocating to your customers the amount of the orders which you have accumulated?

A. Yes.

Q. When Mr. Hood was selling out in the city did you ever find it necessary for you to communicate with him because of matters that had arisen in the office?

A. Seldom.

Q. When you are out now selling does Mr. Baltzegar ever find it necessary to communicate with you?

A. This morning was only the first occasion.

Q. Since May 24th.

A. Yes.

Q. Now, with reference to passing on credits and turning down past due accounts do you have any rule which you follow in that connection?

A. Yes.

Q. What is it?

A. Taking into consideration the account the period of time they were sold it as to why the account became past due.

Q. What is considered a past due account?

A. I would consider a 60 or 90 days a past due account.

Q. Is that in accordance with the instructions from the Jacksonville office?

A. Yes.

Q. Do you follow the instructions for rules laid down in the Jacksonville office in passing on credits or turning down accounts?

A. To the best of my ability.

Q. Do you follow their rule?

A. Yes, sir.

Re-Cross Examination.

By Mr. Kurz:

Q. Mr. Fleck, what is that contract with Webb?

A. The contract here—our competitor had the contract.

Q. Did you handle that?

A. No, Mr. Hood handled it.

Q. Do you know anything about it of your own knowledge?

A. Not of my own knowledge except the contract.

Mr. Kurz:

I move to strike that evidence.

Mr. Downing:

Let him finish his answer.

The Witness:

Except what has been coming to this office from Mr. Hood it was the prices that we were charging on these orders when they phoned in.

By Mr. Kurz:

Q. Did that state the quantity?

A. No.

Q. Do you have any record in the office of the quantity that was covered by that order?

A. No, I don't. It was a verbal transaction was my understanding.

Q. How were those to be delivered?

A. Twenty five cases per delivery.

Q. Do you carry that quantity in stock?

A. Yes.

Q. When you testified you didn't handle a million cups in stock did you mean by that that there would be a call on you for a million cups at one time?

A. No.

Q. And you do have in stock as many cups as are necessary to fill the orders as they are phoned in from time to time, is that correct?

A. Yes.

Q. Now in regard to the bulk and volume of these special items, the printed items for particular customers, is not a fact that this is a very small percentage of your total bulk of goods that come in in a year?

A. Yes, it is a small percent.

Q. What bookkeeping is involved in this, that is in this special kind of item, who makes out the order?

A. The manager.

Q. Is that order made out in quadruplicate?

A. Yes.

Q. And when the goods are received does the delivery man take one of the copies as an invoice for the customer?

A. Yes.

Q. And one of the copies is used to post by?

A. Yes, and one is sent to Jacksonville.

Q. And the only thing that has to be done except for the salesman making that out is to extend that on your ledger, is it not?

A. Yes.

Q. Mr. Baltzegar found it necessary to communicate with you only one time since has been here and that was this morning. What was the reason for that communication?

A. To interview you gentlemen.

Q. You said that if one of the customers wanted several items that you could not fill immediately. Would you accumulate these orders and you said you did and how far did you accumulate them?

A. Just for a period of thirty days.

Q. Well, did you give the customer confirmation on the orders or anything like that?

A. No.

Q. Suppose a customer added butcher paper which you didn't have in stock, what would you do with the order?

A. Hold it on arrival of butcher paper.

Q. Do you tell the man you don't have it and can't supply it?

A. The salesman would notify the customer that the item was not in stock and could not be delivered.

Q. Did you place any special order to fill such a customer's requirements?

A. No, sir.

Q. The only requisition that you made for merchandise was when you wanted to replenish your stock, is that correct?

A. Yes.

Re-Direct Examination.

By Mr. Downing:

Q. Mr. Fleck, in connection with these special items furnished to customers, does the office here prepare statements covering these items, monthly statements?

A. Yes, monthly statements.

Q. And that is done by the lady here?

A. Yes, at the end of each month.

Q. Do you ever find it necessary to write to Jacksonville office or to any other place about these items?

A. To the Jacksonville office at times, yes.

Q. Does Mrs. Bartecki type those?

A. Yes.

Q. Do you ever find it necessary to write to your customers about it?

A. No, sir.

Q. Do you ever telephone your customers about it?

A. No, sir.

Q. Does Mrs. Bartecki ever make any of these calls?

A. No.

Q. Does the cashier ever do any of that?

A. No.

Q. Who does?

A. The manager and salesman handling the sales.

Q. I will ask you again if there is any difference in the routine clerical work on the special items and the stock items?

A. Not a bit.

Q. Who was it told you about the Webb contract?

A. Mr. Hood.

Q. You made some reference to him getting Mr. Webb away from a competitor, is that correct?

A. Cups are a competitive item, yes.

The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.

730 Thereupon, SHERMAN A. OWENSBY, JR., was duly sworn and testified as follows:

Direct Examination.

By Mr. Shelton:

Q. Will you state your full name?

A. Sherman A. Owensby, Jr.

Q. How long have you been employed by Pinellas Paper Company?

A. This week will be a month, I think.

Q. Has your job the whole time with the company been the same?

A. No.

Q. What did you do at the beginning?

A. I started driving trucks.

Q. How long did you drive a truck?

A. For three weeks.

Q. Then it has been just about one more week that you have had another job?

A. Yes.

Q. What is your job now?

A. Shipping clerk.

Q. Now where do you work as shipping clerk?

A. Here in the warehouse.

Q. Will you state briefly what your job is as shipping clerk?

A. Simply put up orders and see that they are right to go out.

Q. State whether or not you have had any duties with respect to goods coming in to the warehouse?

A. What do you mean?

Q. Who unloads the goods brought here to the warehouse by truck?

A. I usually work with the boys and we hire other men to help us, when they are needed.

Q. You say you work with the boys. You are referring to the regular employees here that work with you?

A. And the cashier and the other truck driver. I don't know his full name.

Q. Does Mr. Baltzegar the cashier and the truck driver, are they the ones you refer to?

A. Yes.

Q. Do I understand that you three unload any incoming goods?

A. Yes, to an extent.

Q. After you unload the goods, where do you put them?

A. In the stock here and in the warehouse and different places.

Q. This truck driver that you refer to you also work in the warehouse. What part of his time does he work in the warehouse?

A. Usually when he is not out on orders, out on the road.

Q. More out on the road or in the warehouse?

A. On the road.

Q. What part of his time is spent outside of the warehouse?

A. I would say the great majority of his time. I can't say exactly how much. Maybe he works an hour or an hour and a half here helping put up the orders so he can take them out.

Q. An hour or an hour and a half in a day?

A. Yes.

Q. And the rest of the time he spends as truck driver?

A. Yes.

Q. You are referring to Monday through Friday and the work is on a schedule from Monday to Friday and you work on Saturday?

A. Yes.

Q. When you said an hour or an hour and a half were you also referring to Saturday?

A. Monday through Friday because we have the orders up by Friday night and they are loaded on the truck to be taken out Saturday morning.

Q. Saturday about how long does the truck driver work in the warehouse?

A. Maybe 15 or 20 minutes helping load his truck.

Q. Now there is nobody else who regularly works in the warehouse except the cashier and you and the truck driver when he is there, is that right? I am talking about regular employees now?

A. Well, there is two salesmen and Mr. Fleck.

Q. Does the salesman help unload?

A. I am talking about in the warehouse. Just the three of us the majority of the time. It is very seldom anybody else will help us.

Q. Is there anybody else out there that has the supervision of unloading in the warehouse? Do you have supervision of anyone else there?

A. No, I don't try to tell anybody to do anything. We just work together.

Q. Have you ever been told that you have authority to hire or fire anybody?

A. No.

Q. Have you ever hired or fired anybody or recommended that anybody be hired or fired?

A. I brought three men who had to help unload these trucks. Two of these were my brothers and the colored boy yesterday.

Q. These are what you call casual labor?

A. I guess so, they are just temporary.

Q. You hire them just to help unload a truck when it comes in?

A. Yes, if it is necessary. When there is nobody else there to help.

Q. And when that work is over you let these people go?

A. Yes.

Q. How much are you paid, Mr. Owensby?

A. I am paid $25 a week.

Q. When do you go to work in the morning?

A. At 8 o'clock.

Q. And how long do you have for dinner?

A. One hour.

Q. And what are your hours on Saturday?

A. 8 o'clock to 1.

Q. And the only people that you have ever had anything to do with hiring or firing were these casual employees?

A. Yes.

Q. Since you have been here have you ever worked after your scheduled, regular scheduled hours because of unloading a car or for any other reason?

A. No, I can't say that I have. If I have I don't remember it.

Q. Do you sign in in the morning when you come in?

A. No, I don't sign.

Q. Since you have been in the warehouse have you signed in?

A. No.

Q. Is there any record of your time kept now?

A. I can't say that because that is kept in the office.

Q. Out there in the warehouse what part of the time would you estimate in the warehouse that you spend in the actual physical handling of goods?

A. Well, I would say all day except by lunch hour because I am always putting up orders.

Q. When you transferred from being truck driver working in the warehouse was anything said about how much you would be paid?

A. Yes, sir.

Q. What was said?

A. $35 weekly basis.

Q. Who told you that?

A. I think the cashier mentioned it but it was not definite because I signed a slip of paper saying that my pay basis had been changed and my hours.

Q. Do you know what was said your new hours would be?

A. No, I don't remember.

Q. Do you know what rate was on the sheet? Did it have any hourly rate?

A. I can't say for sure because I just scanned over it.

Q. Was that just a week ago you were shown that sheet?

A. That was Monday of this week.

Q. And do you remember that you were to be paid $35.00 a week?

A. Yes.

Cross Examination.

By Mr. Kurz:

Q. Mr. Owensby, who tells the truck driver about what to do about loading up his truck?

A. We all worked on that together.

Q. And getting the merchandise together and all that?

A. We all worked together.

Q. Do you tell them to do it?

A. I make up the order. It is made out according to the order and the cashier brings it back out and we load them up. Who tells him, I don't know.

Q. Do you show the cashier the order?

A. The cashier checks them on the truck and the orders are turned over to the driver.

Q. Have you had occasion to employ anybody or recommend that anybody be employed or discharged since you have been on this job and as shipping clerk?

A. No.

Q. But you do employ extra labor that is to be employed?

A. Yes.

Re-Direct Examination.

By Mr. Shelton:

Q. Were you told that you would get a bonus at any time?

A. That was mentioned. I worked here one day before, and Mr. Hood said there would be a bonus.

State of Florida,
County of Hillsborough.

I, William H. Horne, a Notary Public in and for said County and State at Large, duly commissioned and qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that on June 13th, 1946, the aforementioned witnesses, namely, Henry Fleck and Sherman Owensby, who were of sound mind and body, were by me first carefully examined, cautioned and duly sworn to testify to the truth, the whole truth, and nothing but the truth; that they thereupon testified as above set forth; that the depositions were taken down and were reduced to writing by me; that the reading and signing of said depositions by the witnesses was waived by said witness and by the said parties by their counsel.

I do further certify that I am not related by blood or marriage nor am I an employee or the attorney or counsel of any of the parties, nor am I a relative of or an employee of said attorneys or counsel or counsel or of the aforementioned witnesses, nor am I financially interested in the transaction.

In witness whereof I have hereunto set my hand and official seal this 15th day of June, 1946.

WILLIAM R. HORNE,
(Notarial Seal) Notary Pubic, State of Florida at large.

My commission expires May 23, 1949.

(Title Omitted.)

Depositions de bene esse of Carrie Louise Anderson, J. H. Green, Richard Fuller Boykin and Joseph Bryant, on behalf of the plaintiff.

D. Filed June 3, 1946.

Filed in evidence Jun. 18, 1946.

In the United States District Court, in and for the Southern District of Florida, Jacksonville Division.

Case No. 209-J Civil Action.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff,

vs.

Clifford G. McGehee, et al., co-partners doing business as Southern Industries, and Jacksonville Paper Company, a corporation, Defendants.

I, Myra Sims, a United States Commissioner and an officer authorized by law to administer oaths, do certify that pursuant to the stipulation of the above parties by their counsel dated May 16, 1946, and filed on May 23, 1946, I did on May 24, 1946, at 3:30 o'clock, P. M., in the

United States District Court Room, Post Office Building Tallahassee, Florida, proceed to take the depositions of Carrie Louise Anderson, J. H. Green, R. F. Boykin, and Joseph Bryant, who, after being by me first duly sworn, testified as hereinafter set forth, said testimony being upon oral examination, being transcribed by Lillian Henry, and reduced to writing by her, pursuant to said stipulation.

There were present, James H. Shelton, Attorney for Plaintiff and Louis Kurz, of the law firm of Ragland, Kurz & Layton, Attorney for the Defendants.

Stipulation.

It is agreed and stipulated between counsel for the respective parties that during all weeks of their employment the following named employees of the Capitol Paper Company, branch of Jacksonville Paper Company, performed a substantial amount of work in interstate commerce: Carrie Louise Anderson, R. F. Boykin, J. H. Green, W. B. Mitchell and Joseph Bryant.

740 MISS CARRIE LOUISE ANDERSON, having been previously duly sworn as a witness on behalf of the Plaintiff, testified as follows:

Direct Examination.

By Mr. Shelton:

Q. Miss Anderson, when were you employed by Capitol Paper Company?

A. The last week in December, to start to work the second.

Q. Do I understand that the first day you actually started to work was January 2, 1946?

A. That is right.

Q. Have you been employed there steadily since that time?

A. That is right.

Q. Will you state what your duties are for the company?

A. Stenographic and—How would you term running up the—

Q. Just state the best you can.

A. I help with the book work.

Q. State whether or not you prepare any forms as a part of your job. Do you prepare any forms?

A. No.

Q. Do you have any job in connection with the purchases of goods from the company?

A. No.

Q. You do mail these sales reports to Jacksonville?

A. That is right, make up reports.

Q. And mail them to Jacksonville?

A. Yes.

Q. By whom were you employed?

A. Mr. Green.

Q. When you were employed by Mr. Green state what he told you about how you would be paid.

A. By the week.

Q. How much did he tell you you would be paid?

A. $30.50, I believe it is.

Q. Did he say anything to you about a bonus?

A. Yes.

Q. What did he say?

A. There would be a certain per cent of my salary and it would start the first of June, I believe.

Q. State whether or not at the time you were employed he told you you were being hired on an hourly

rate. When Mr. Green employed you, did he tell you or did he not tell you you were being employed, hired, on an hourly rate?

A. Oh, yes.

Q. What did he tell you that hourly rate was?

A. I don't know. I don't know if I asked or not because I was told it would be on a weekly basis.

Q. At the time you were employed, were you told how many hours a week you would work?

A. Yes.

Q. What were you told?

A. From 8 to 6.

Q. Were you told whether you would have a dinner hour?

A. Oh, yes, an hour for lunch.

Q. Were you told what your Saturday hours would be?

A. To one o'clock.

Q. Do I understand that you were told your hours in the week running from Monday to Friday would be from eight to six with an hour for dinner and on Saturday from eight to one?

A. That is right.

Q. State whether or not those have been your approximate hours since you have worked there?

A. They have.

Q. Now, Miss Anderson, adding up those hours, how many hours a week would that amount to? In the first place, on the regular days, from eight to six with an hour for dinner would be how many hours?

A. You mean a day or week?

Q. A day.

A. It would be about nine or nine and a half, wouldn't it?

Q. It would be nine, wouldn't it?

A. Yes.

Q. And that would be for five days a week and there would be five hours on Saturday?

A. Yes.

Q. Then, five nine-hour days and a five-hour day would make a fifty-hour week?

A. Yes.

Q. Were you told anything about being set up on the books of the company at any different number of hours for any purpose?

A. No.

Q. State whether or not you were told that if you worked more than fifty hours you might build up any obligation to the company.

A. No, I wasn't told anything like that.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. You were employed by Mr. Green, you say?

A. Yes.

Q. What did he tell you about whether your salary would be worked out on an hourly basis?

A. Well, I really don't remember any discussion about how much it would be by the hour. I was just told I would be paid by the week.

Q. Did he mention anything about that you would be placed to work on the basis of so much per hour?

A. No.

Q. All he told you was there would be $30.50 a week?

A. Yes.

Q. That would be for hours from eight to six during Monday to Friday and eight to one on Saturday?

A. Yes.

Q. Did you sign any sort of employment receipt or anything of that kind?

A. Yes.

Q. Do you have a copy of that with you?

A. No, I don't.

Q. But you did sign a statement at the time of your employment in regard to your compensation, is that right?

A. Yes.

Q. You also signed every day that you worked for the number of hours that you said then when you came to work?

A. Yes.

Q. The time you went to lunch, and so forth?

A. Yes.

Q. I hand you herewith a sheet marked "Daily Time Sheet, 5-18-46, and ask you if that is your signature on that sheet.

A. Yes.

Mr. Kurz:

We offer that for identification.

Mr. Shelton:

Do you offer just the time sheet, the single sheet?

Mr. Kurz:

Just that.

The paper above referred to, being a time sheet, was received and marked Defendant's Identification No. 1.

Mr. Kurz:

That is all.

Mr. Shelton:

I think it would be desirable to have that paper that the witness signed produced up here this afternoon and I will ask that she be excused and subject to recall when that paper is produced up here.

(Discussion off the record.)

Mr. Kurz:

I understand that that record went to Jacksonville and is not kept in Tallahassee.

Mr. Shelton:

In the light of that we will not ask that this witness produce that contract unless she has a copy herself.

Re-Direct Examination.

Mr. Shelton:

Q. Miss Anderson, do you have a copy of that paper you signed?

A. No.

Q. If you remember, was there only an original at the time you signed it?

A. I don't remember, but I think there was a copy.

Q. You think there was an original and a copy?

A. Yes.

Q. Do I understand that you kept neither the original nor the copy?

A. No.

Q. In other words, neither one of those was given you?

A. I don't remember if they were given to me or not.

Q. If they were given to you, you don't remember it?

A. No.

Q. And as far as you know, you don't now have eith an original or copy?

A. No.

Q. Miss Anderson, do you have any recollection at a as to what was on that piece of paper you signed?

Mr. Kurz:

I object to the question on the ground that the pap would be the best evidence.

The Witness:

A. The best I remember, it was stating that I wou work for the salary that I was told to and the numb of hours. And I also remember signing one where I d clined insurance.

Mr. Shelton:

Q. Do I understand that you have stated all you r member about signing that paper?

A. Yes.

Mr. Shelton:

Your witness.

Mr. Kurz:

No further questions.

(Witness excused.)

The reading and signing of the deposition by the wi ness was waived by the witness and by the parties her to by their counsel.

J. H. GREEN, having been previously duly sworn as a witness on behalf of the Plaintiff, testified as follows:

745 Direct Examination.

By Mr. Shelton:

Q. Will you please state your full name?

A. John H. Green.

Q. By whom are you employed?

A. M. R. McGehee.

Q. What is the name of the company by whom you are employed?

A. Jacksonville Paper Company.

Q. And you are employed in the Capitol Paper Company branch here in Tallahassee?

A. Yes, sir.

Q. When did you first start to work for that company, Mr. Green?

A. In November, 1942.

Q. Have you worked continuously there since that time?

A. Yes, sir.

Q. State whether you have missed any time on account of sickness.

A. No, sir, not that I remember.

Q. Have you had any vacation?

A. Yes, sir.

Q. How many times have you had a vacation since you came there?

A. Let's see. Two.

Q. Do you remember what year the first vacation was in?

A. 1944.

Q. What time of the year?

A. I don't remember, but I believe it was in July.

Q. How long was it?

A. A week.

Q. When was the second vacation that you had?

A. 1945.

Q. What time of the year?

A. August.

Q. How long was that?

A. One week.

Q. What time do you regularly go to work in the morning?

A. Eight a. m.

Q. Does that apply six days a week?

A. Yes, sir.

Q. Monday through Friday what time do you quit?

A. Six p. m

Q. Do you have any lunch hour?

A. Yes, sir.

Q. How long?

A. One hour.

Q. When is it?

A. Usually between one and two.

Q. When do you quit on Saturday?

A. One o'clock.

Q. That would make a fifty-hour week, wouldn't it—five nine-hour days and five hours on Saturday?

A. Yes, sir.

Q. Since you have been employed by the company, Mr. Green, have your duties been substantially the same?

A. Yes, sir.

Q. State whether or not you perform any bookkeeping duties for the company.

A. I do.

Q. Will you state what they are, please?

A. Posting the debits and credits to accounts receivable.

Q. State whether you make out statements for customers.

A. Yes, sir, I do.

Q. State whether you make up any payroll records.

A. I make the record on the extra labor and finish the regular weekly payroll.

Q. Now, on what employees who are employed there do you finish the record on the weekly payroll?

A. On all of the regular employees.

Q. Would you name them, please?

A. Mr. Thigpen, Mr. Adams, Miss Carrie Louise Anderson, R. F. Boykin, Joseph Bryant, W. B. Mitchell, W. C. Culpepper, L. S. Cherry.

Q. Who at the branch posts the customer's invoices?

A. I do.

Q. State whether or not accounts receivable ledger is made up from those invoices?

A. Yes, sir.

Q. Who makes up that accounts receivable ledger?

A. Well, that is the posting the invoices, making the ledger.

Q. Now, including payroll work and bookkeeping work—What part of your total time during the week is devoted to payroll work and bookkeeping work?

A. About half, I would say.

Q. State whether or not during the week you perform the duties of a shipping clerk at any time.

A. Between twelve and one everyone goes to lunch and I am there and I am it, whatever is to be done, I have to do it.

Q. How many days a week does that happen?

A. Five days.

Q. That would require five hours then, would it not?

A. Yes, sir.

Q. Who makes the bank deposits at the branch?

A. I do.

Q. Who handles the money?

A. I do.

Q. Who pays the employees?

A. I do.

Q. Who makes disbursements of cash out of petty cash funds?

A. I do.

Q. Now, besides payroll payments and payments out of petty cash, state whether or not you make any other disbursements of money.

A. No.—What was that question?

(Question read by the Reporter.)

Q. Is that right?

A. What do you mean, now?

Q. I will try to state it simpler.

A. I thought you said out of petty cash.

Q. I am talking about how you handle money. I understand that you make up the payroll and you make payments of money out of petty cash. Do you handle any money except those two types of handling? Other than making up payrolls and petty cash?

A. Yes, payments on account.

Q. Isn't it true that those payments are made out of the petty cash fund?

A. Yes, the local bills.

Q. In other words, small local bills are paid out of the petty cash?

A. That is right.

Q. Do I understand that all the money you pay out is paid out of petty cash or paid out in the payroll envelopes?

A. Yes.

Q. State whether or not in meeting the payroll you get a check from the Jacksonville office?

A. Yes.

Q. You then deposit that check in the bank?

A. No, sir.

Q. How do you handle the check?

A. The check is cashed or handled through the petty cash with Jacksonville. In other words, if I have sufficient cash to make the payroll, I just include the check in the deposit. Otherwise, I cash the check for the payroll.

Q. How often do you get a payroll check from Jacksonville to meet the payroll?

A. Once a week.

Q. Who at the branch pays freight bills which come in collect?

A. I do.

Q. State whether or not you write leters in connection with your job?

A. Yes, sir, I do.

Q. What kind of letters do you write?

A. Well, I write the letters to Jacksonville in connection with the accounting and letters to customers on collections and that is about all.

Q. State whether you ever correspond with the Jacksonville office about the return of merchandise.

A. To whom?

Q. Either about the return of merchandise from your customers to you or about returns by you to the Jacksonville office?

A. Well, the handling of the returns of merchandise to the Jacksonville office would be handled by Mr. Thigpen. However, at times I do write Jacksonville about a return from a customer that they are not clear on.

Q. State whether there may be any other occasions or any other subjects about which you will write to Jacksonville on?

A. None that I remember except for the hiring of a stenographer.

Q. Do you ever have to write to Jacksonville often about any questions you have in making up the payroll?

A. No, sir, they usually write me.

Q. State whether it is part of your duty for the company to pass on extension of credit to your customers.

A. Do you mean is that part of my duties?

Q. Yes.

A. Yes, sir, that is.

Q. Will you state approximately how much time a week you spend in passing on credit to customers.

A. Well, I don't have much idea how much total time it would be, but I would guess around 2 hours a week would cover it.

Q. Mr. Thigpen is the manager of this branch, is he not?

A. Yes, sir.

Q. When he is out of the office, who is in charge?

A. I am.

Q. During the time you have been employed there, has Mr. Thigpen been the manager the whole time?

A. Yes, sir.

Q. To the best of your knowledge, what part of the time is Mr. Thigpen in the office?

A. About half.

Q. And he is out the other half?

A. Yes.

Q. Of Mr. Thigpen's sales territory, what part is in Leon County, which is the county in which Tallahassee is?

A. I believe the city of Tallahassee is all that is in Leon County.

Q. Of the selling that Mr. Thigpen does, what part of his time would you say he spends selling in Tallahassee?

A. Well, that is hard to say. I wouldn't know.

Q. Well, could you approxmiate what part he spends in Tallahassee?

Mr. Kurz:

Objection. The witness has stated he does not know.

The Witness:
You want me to make an estimate?

Mr. Shelton:
Yes, I want you to make an estimate.

A. Twenty-five per cent.

Q. Now, when Mr. Thigpen is selling in Tallahassee, does he regularly stop by the office sometime during the day?

A. Yes, sir.

Q. During the time that you have been here, what is the smallest number of days a week that you remember Mr. Thigpen's being out of the office. Stride that. Being in the office.

A. Well, I do not remember, but two days would be the shortest week that I remember.

Q. Two days would be the shortest number of days in the week you remember his being in the office?

A. That is right.

Q. State whether anyone at the Capitol Paper Company works under your supervision?

A. Miss Anderson.

Q. State whether there is anyone else there who is under your supervision.

A. None except when Mr. Thigpen is not there.

Q. When Mr. Thigpen is there you supervise only Miss Anderson?

A. When he is there, yes.

Q. State whether or not casual labor is sometimes hired by the company to unload incoming cars.

A. Yes.

Q. Who hires such casual labor?

A. Mr. Thigpen.

Q. Suppose Mr. Thigpen is out of the office, who hires the casual labor?

A. I imagine next in line it would be me.

Q. About how many times a month do you hire casual labor?

A. It varies depending on the cars. Some months we might get two cars and some months twelve and at times we would not use any extra labor at all even though we did get cars. It depends on the business.

Q. I will ask you to state about how many times since the first of January of this year you have hired casual labor to work there at the company. I don't mean you personally. How many times has such casual labor been hired there this year?

A. I couldn't state.

Q. During the past month, could you state about how many times casual labor has been hired down there?

A. I would say five or six times, just a guess.

Q. What do you consider to be your primary job for the company?

A. Well, the most essential part of my job is credit and cashier.

Q. From the standpoint of the time you spend working there, what is your main job?

A. My main job I would say is the handling of credits and the handling of cash.

Q. Are you including in that the keeping of records?

A. Well, no, speaking of it from the most essential point of view. In other words, you could get someone to keep the books, maybe, or nearly anyone, but the handling of the cash and the credits is something that requires a little more knowledge.

Q. From the standpoint of time, you testified a while ago, did you not, that the keeping of the payroll records and keeping of the other records would take about half your time?

A. Yes, sir.

Q. Now, Mr. Green, the casual labor that is hired down there to unload cars, who tells those casual em-

ployees what they are to do? Who tells them what their job is? When casual labor is hired, who tells them what to do?

A. Well, most of the time Mr. Boykin. He has charge of the handling of the receiving of the goods.

Q. Mr. Boykin is the shipping clerk, isn't he?

A. Yes, sir.

Q. I believe you may have made some mention in your testimony of Mr. M. R. McGehee. Who is he?

A. He is the Secretary and Treasurer of the Jacksonville Paper Company.

Q. Where is he employed by the company?

A. Jacksonville, Florida.

Q. About how often does he come to the branch here in Tallahassee?

A. He has not been here since I have.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. Mr. Green, you testified about vacations since your employment. Do I understand that you were employed in November, 1942?

A. Yes, sir, that is right.

Q. Did you have any vacation in 1943?

A. I do not think I was eligible for one.

Q. As far as you know you did not?

A. I came to work in the fall, you know, and I didn't have a year's service.

Q. What is your title with the company?

A. Cashier.

Q. Who is responsible for the extending of credits at the Tallahassee branch?

A. I am.

Q. Does that involve the consideration of the credit rating of the various customers?

A. Yes, sir.

Q. In other words, you have to approve the credit rating before any goods are shipped except on a C. O. D. basis or for cash?

A. Yes, sir.

Q. You stated that during the lunch hour you also handled the duties of shipping clerk and then in answer to a question which Mr. Shelton propounded, you said that took five hours a week. Did you mean that every day for one whole hour you performed the duties of a shipping clerk?

A. I think that you will find in my statement that I said that I was the only one there and whatever came up I had to do.

Q. That doesn't mean you are busy on that particular job the whole hour?

A. No, sir. At times I don't go in the warehouse the whole noon hour.

Q. Isn't it a fact that usually there is no shipping done, that the shipping clerk's duties are suspended during lunch?

A. Except for calls.

Q. Occasional calls?

A. Yes, sir.

Q. You stated that you make disbursements for various purposes such as extra labor, freight bills and local bills, and so forth. Who is held responsible for making those disbursements: You did testify that you made disbursements for bills against the Tallahassee branch for various purposes. In making those disbursements do you have to check to see whether those payments are proper to be made?

A. Yes, sir.

Q. Who is held responsible for seeing that no cash is paid out for improper purposes?

A. I am.

Q. During Mr. Thigpen's absence from the office, I believe you said you were in charge?

A. Yes, sir.

Q. Do your duties also involve the keeping of credits and accounts to see that they are paid?

A. Do you mean the following up of past due accounts?

Q. The following up of past due accounts.

A. Yes, sir, that is right.

Q. In connection with that duty, do you have occasion to direct salesmen about making calls on customers in endeavoring to make collections?

A. Yes, sir.

Q. You said that during the last month extra labor had been employed five or six times. Is that about the normal number of times that extra labor is employed during a one-month period, or is that heavier or less than usual?

A. As stated, it was purely a guess. The last month is about normal in so far as I can remember.

Q. Miss Anderson testified here today and stated that she was employed by you and that she had some conversation with you about the terms of her employment. Will you please state what conversation you had with her about those terms of employment, how her compensation would be determined?

A. Well, I explained to her that her working hours would be set up on a certain basis and the rate would be thus and so and explained to her the working hours schedule.

Q. In connection with her employment, did Miss Anderson make an application of any kind?

A. Yes, sir.

Q. Where is that application now?

A. It is in Jacksonville.

Q. Did that application contain information as to the rate of pay?

A. I don't believe so.

Q. Is there a form which Miss Anderson signed which specifies the hourly rate of pay?

A. That is a special form, yes, sir.

Q. That is a form other than the application?

A. Yes, sir.

Q. Did Miss Anderson sign such a form?

A. Yes, sir.

Q. Where is that now?

A. Jacksonville.

Q. I believe you employed Miss Anderson?

A. Yes, sir.

Q. Who usually employs the stenographer for the office?

A. Here they said the cashier is responsible, was to hire and supervise the work of the stenographer.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Shelton:

Q. At the time you were employed in November, 1942, how much were you paid, what salary?

A. $40 per week.

Q. Did you later get a raise from that figure?

A. Yes, sir.

Q. To how much?

A. $43.50.

Q. As well as you remember, about when did you get that raise?

A. I will be dogged if I can remember. I believe it was the early part of 1945.

Q. Have you had a second raise?

A. Yes, sir.

Q. What are you now being paid?

A. $45.00.

Q. In addition to your salary, state whether you also receive a bonus.

A. I do.

Q. How many times a year are you paid that bonus?

A. Twelve times.

Q. State whether that bonus amounts to the same thing every month during the same year.

A. It does.

Q. In other words, during the company's fiscal year you get twelve equal bonus payments?

A. That is right.

Q. Do I understand from what you told Mr. Kurz that one of your jobs during the lunch hour is selling goods over the counter if customers come in? Is that a frequent occurrence during the lunch hour or not?

Q.[A.] Well, it is infrequent.

Q. What other jobs do you customarily do when you are on during that lunch hour?

A. My regular duties.

Q. If it should happen that an express shipment or a truck shipment should come in during the lunch period, are you authorized to sign for that shipment?

A. Yes, sir.

Q. Do you do that?

A. Yes, sir.

Q. Do you ever sign for rail shipments during the lunch period?

A. I don't remember ever having signed for one during the lunch hour.

Q. Do you ever make sales over the counter outside the lunch hour?

A. No, sir.

Q. Now, you have testified about paying out petty cash out of the petty cash fund, haven't you?

A. Yes, sir.

Q. Can you state approximately how much petty cash you pay out a month exclusive of the payroll envelopes?

A. Per month?

Q. Per month.

A. It would be less than $400.

Q. How much less?

A. Well, it would be a guess. It varies but the weekly petty cash runs less than $100. That is what I was going by.

Q. Now, as close as you can come to the weekly average, how much would it be?

A. I would guess $350 for the month.

Q. Now, in response to questions by Mr. Kurz you stated that you follow up past due accounts. As nearly as you can come to it, how much time do you spend in a week at that job?

A. Approximately a couple of hours.

Q. You have also testified about employing Miss Anderson. Who was the stenographer employed by the company before Miss Anderson?

A. Mrs. Shelton.

Q. Since you have been there, has there been any other stenographer other than Mrs. Shelton and Miss Anderson?

A. Yes, sir.

Q. Who was employed immediately before Mrs. Shelton as the stenographer?

A. I don't remember.

Q. Have you ever employed more than one stenographer at a time?

A. No, sir.

Q. Who hired Mrs. Shelton?

A. I did.

Q. Did you hire the one before her?

A. Yes, sir.

Q. When Mrs. Shelton left did you make any report to the Jacksonville office in connection with any hours that she had accumulated either debit or credit on this payroll account that is kept for her?

A. No, sir.

Q. Did you look at her payroll record to see whether the company owed her money or she owed the company money, based on the payroll accounts?

A. I knew without looking.

Q. What did the record show?

A. That she had accumulated hours not worked.

Q. About how many hours was that?

A. I don't know.

Q. Would it have been more or less than 100?

A. I do not know.

Q. Would it have been more or less than fifty?

Mr. Kurz:

Objection. The witness has stated and the record is the best evidence.

Mr. Shelton:

Q. Did you answer that last question?

A. I said it would be more than fifty.

Q. At the time she left, state whether you made any demand on Mrs. Shelton for any amount of money owing to the company by her.

A. I did not.

Q. As far as you know, did anyone else at the company make any demand on her for money owed to the company?

A. No.

Q. With respect to the bonus that you are paid, have you received that since the beginning of the first fiscal year after you started to work for the company?

A. Yes.

Mr. Shelton:
Your witness.

Re-Cross Examination.

By Mr. Kurz:

Q. How much does that bonus amount to now?

A. Twenty per cent.

Q. Can you tell me in dollars and cents per month how much you get?

A. It is $33 and some cents, I don't remember what.

Q. Is that the amount of the check you receive after deductions?

A. Yes, sir.

Q. In other words, that is the net after withholding tax, social security?

A. Yes, sir, that is right.

Q. Do you know where Mrs. Shelton is now?

A. I understand she is at New Smyrna Beach, Florida.

Q. Do you know what she is doing?

A. Housewife, so far as I know.

Q. Do you know whether she has any property out of which any money could be collected?

A. I do not know.

Mr. Kurz:
That is all.

Mr. Shelton:
That is all, Mr. Green.

(Witness excused.)

The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.

RICHARD FULLER BOYKIN, having been previously duly sworn as a witness on behalf of the Plaintiff, testified as follows:

762 Direct Examination.

By Mr. Shelton:

Q. Mr. Boykin, will you state your full name, please?

A. Richard Fuller Boykin.

Q. By whom are you now employed?

A. Capitol Paper Company.

Q. Is Capitol Paper Company a branch of Jacksonville Paper Company?

A. Yes, sir.

Q. How long have you been employed by Capitol Paper Company?

A. Well, about near three and a half years, I guess.

Q. If you remember, in what month did you begin work there?

A. If I make no mistake, it was in October of 1942, I believe it was.

Q. When you first started there, how much were you paid a week?

A. $25.00.

Q. Did you get a raise shortly after you went there?

A. Well, I got a raise of 20 cents. That is a very little raise but it was that much.

Q. If you remember, what was your next raise to?

A. $28.00.

Q. What are you getting now?

A. $31.50.

Q. State whether or not you also get a bonus.

A. Yes, sir.

Q. How many times a year is the bonus paid?

A. Twelve times, the first of each month.

Q. As close as you remember, how much bonus do you draw each month now?

A. Well, I couldn't say exactly but it is in the neighborhood of $22, between $22 and $23, if I remember right.

Q. Will you state whether there has been any substantial change in your duties during the time you have been employed there?

A. No, sir, it has been approximately the same all the way.

Q. Will you state what your duties are?

A. Well, I receive the merchandise that comes in and see to the shipping that goes out.

Q. State whether or not in connection with receiving incoming goods and handling outgoing goods to the company's customers it is necessary to prepare papers, documents and reports of various kinds?

A. I see to the truck reports and I have to make a record of what comes in and bills of lading, and so forth, for what goes out.

Q. With respect to the incoming goods, is there anybody at the warehouse who checks the incoming goods against the bill of lading or invoice?

A. Well, I suppose they do that in the office. I don't check them as they come in. I mean I don't check against the invoice.

Q. What document do you check against the goods to see that the goods are all there?

A. I check against the freight bill that they give me when they buy the goods then I make a record of it in my book like I receive it.

Q. In other words, you check the incoming freight bill against the goods to see if the goods and freight bill correspond?

A. Yes, sir.

Q. Do you do that with respect to rail shipments?

A. Yes, sir.

Q. With respect to truck shipments?

A. Yes, sir.

Q. When express shipments come in, what kind of shipping document comes?

A. There is always a little bill of lading, I reckon you might term it, just a little slip stating how many packages there is, just generally what they are.

Q. Do you get anything in by parcel post?

A. Some, not so much.

Q. Do you check that the same way?

A. Well, really I don't have anything to check that against, I just put it in my receiving book what I get.

Q. Whose job is it down there to get up the goods to be shipped out?

A. Well, it is between me and the two boys back there. We do. They do most of it but then I am usually there to see to it and help them any way I can.

Q. What are their names?

A. Joseph Bryant and Willie Mitchell.

Q. In connection with the goods going out to the company's customers, do you make up any paper showing what is being shipped?

A. Yes, sir.

Q. What is that called?

A. It is a regular shipping bill of lading. The shipping companies, different freight companies, furnish their blanks and I fill in the blanks where it is going and what it is, the weight.

Q. Do you do that approximately the same way for rail, truck and express shipments?

A. Yes, sir.

Q. Do you have any outgoing parcel post shipments?

A. Yes, sir.

Q. Do you make up any bill on them?

A. Yes, sir, the post office furnishes a blank to fill out on that.

Q. Now, what forms of reports do you have to make up on goods handled? Do you make up any reports on what you handle in the warehouse?

A. No, sir.

Q. How often do you take inventory in the warehouse?

A. Every three months.

Q. Who does that?

A. We all take that, the whole force.

Q. You mean all the employees of the company or all the employees in the warehouse?

A. All the employees in the company usually help with that.

Q. About how long does it take to make that inventory?

A. For the complete count, why usually a day and a half.

Q. In other words, Mr. Boykin, you do have a number of duties with respect to the making up of papers of various kinds and checking of papers of various kinds?

A. Yes, sir.

Q. What portion of your time do you spend in handling paper work of that kind?

A. That is merely a guess, but I know—I have never really kept time on it, but I would say over half my time is writing, making these records, bills, and so forth.

Q. Do you also physically handle goods in the warehouse?

A. Yes, sir, when it becomes necessary.

Q. How many hours a day would you spend in physically handling goods in the warehouse?

A. That is a hard question to say. It would merely be a guess because, you know, it varies, some days more than others. But I would say three hours, three and a half hours a day, something like that maybe I am actually helping get up goods and handling, loading trucks or whatever it might be, unloading cars.

Q. Mr. Boykin, since you have been with the company have your hours of work been approximately the same?

A. Yes, sir.

Q. What time do you come to work in the morning?

A. Eight o'clock.

Q. On the week days from Monday through Friday, what time do you leave?

A. Well, I don't have a certain time due to the fact I drive a delivery truck to dinner and whenever it gets back, sometimes anywhere from twelve to one o'clock. Of course, most of the time it is around twelve o'clock.

Q. I don't believe you understood the question. I asked what time you leave at night.

A. Six o'clock.

Q. How long do you take for dinner during the day?

A. One hour.

Q. Do I understand from what you said before, your time of starting dinner may vary some?

A. Yes, sir.

Q. But you take an hour?

A. Yes, sir, I take an hour.

Q. What time on Saturday?

A. One o'clock.

Q. Do you take any time for a meal on Saturday?

A. No, sir.

Q. I believe that has been your schedule for the week days and Saturday since you have been down there?

A. Yes, sir.

Q. Do you remember signing any contract as to the number of hours that you would work for the company?

A. No, sir, I don't remember ever signing a contract like that.

Q. Do you ever remember signing any contract or agreement that set you up on an hourly rate basis?

A. No, sir.

Q. According to your understanding, how have you been paid by the company?

Mr. Kurz:

Object to the question on the ground that it calls for the understanding of the witness rather than the facts.

Mr. Shelton:

You may go ahead and answer, Mr. Boykin.

A. Well, the main thing I know is that I get paid once a week and it is the same thing each week. Now, what I mean, someone else does the figuring of that part of it.

Q. As well as you remember, how much time have you missed on account of sickness since you have been with the company?

A. Well, at one time I missed about ten days and that is practically all. I might have missed a half day or something like that other than that, but that is practically all.

Q. Do you remember about when it was that you missed that ten days?

A. It was along about the first of September last year.

Q. State whether or not you have had any vacation since you have been with the company.

A. I haven't taken any. They have paid me double for vacations but I never taken any. They left that up to me whether to take an extra week's pay of vacation.

Q. As well as you remember, how many times has that happened since you have been with the company?

A. I believe twice.

Q. Do you remember what years those were?

A. It was 1944 and 1945.

Q. It is customary at the plant to employ casual labor to help unload freight cars, isn't it?

A. Yes, sir.

Q. As well as you can, state about how many times a month that happens?

A. Well, that depends. Sometimes we get more cars than we do others. We may get a car every day or several days than go two or three weeks and don't get one at all.

Q. If you can, will you give any approximation of how many times on the average in a month you will employ casual labor.

A. Well, this would be purely a guess, but I would say about four times a month.

Q. Is any actual record kept of the hours you work the same thing each week.

A. Well, I couldn't say about that any more than just I think they do in the office, but for actually saying positively I couldn't say.

Q. Do you know whether or not you are paid any overtime for hours worked beyond forty in a week?

A. It is like I stated before, I get mine every week, the same thing each weke.

Q. You have testified, I believe, that you were out sick for ten days last year?

A. Yes, sir.

Q. That would have involved more than one work week, wouldn't it?

A. Yes, sir.

Q. It would have involved two work weeks?

A. Yes, sir.

Q. State whether or not you were paid your regular weekly salary?

A. Yes, sir, I was.

Q. I don't remember whether you testified whether or not you are paid a bonus. Are you paid a bonus?

A. Yes, sir.

Q. State whether anyone has ever told you that when you worked any particular number of hours or didn't

work any particular number of hours you were building up any liability to the company.

A. Just what do you mean by that?

A. [Q.] I will rephrase that. Has anybody ever told you if you worked less than a certain number of hours a week you were building up any obligation to pay money back to the company?

A. No, sir.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. You said that you didn't remember at the time you were employed by the company whether you signed any application or contract. Do you mean by that that you could have signed one and don't recall it or do you mean that you did not sign one?

A. It seems I remember signing an application of some kind but then it didn't specify how many hours or anything like that.

In other words, what I understood it to be was just applying for a job with Capitol Paper Company.

Q. After you signed the application did you also sign another paper that set forth the number of hours and rate of pay per hours you received?

A. No, sir, I don't remember ever signing anything like that.

Q. You said that the office kept a record of the time you came to work and checked out at noon, and so forth. Do you sign that every day as you come in?

A. I make up that report every week. But then I turn it in to them. That is all I do.

Q. Do you sign it every day or every week?

A. Well, no, sir, I don't sign it every day because I am making full time and I make it up, some days, you know, I might neglect it and I know I am not losing any time and when I do make it up I fill it out for the full time.

Q. Is this your signature on that?

A. Yes, sir.

Q. That represents the correct number of hours that you work?

A. Yes, sir.

Mr. Kurz:

We offer for identification a sheet marked "Daily Time Sheet, 8/13/ to 18/1946 about which the witness has just testified.

The paper above referred to, being a time sheet, was received and marked Defendant's Identification Number 2.

Q. Who has charge of the shipping department of the Capitol Paper Company?

A. I do.

Q. You mentioned Bryant and Mitchell. Do they work under you in that office?

A. Mr. Thigpen, of course, is general manager and I guess you might term me as straw boss. He tells me what he wants done and I pass it on to them. A lot of times he will come out and tell us all and we will go ahead and do it, see.

Q. But ordinarily you tell Mitchell and Bryant what you want done in the warehouse and they carry out your instructions, is that right?

A. Yes, sir. Of course, Mr. Thigpen is general manager.

Q. He is the manager of the plant?

A. Yes, sir.

Q. You testified about this extra labor. Who employs the extra labor?

A. Well, Mr. Thigpen usually tells us how much extra labor he figures we will need then we go out and get whatever we can up to the amount for him.

Q. Who employs them?

A. I usually keep their time myself.

Q. Who selects them?

A. We just send the truck out. Sometimes it is Bryant or Mitchell. Sometimes Mr. Adams, sometimes Mr. Thigpen, just whoever finds them.

Q. If somebody comes in on the extra labor gang that you think isn't a fit employee do you tell them you don't want them?

A. I usually leave that up to Mr. Thigpen.

Q. Who directs the extra labor as to what they should do after they are employed?

A. That depends somwehat. It depends on what we are doing. Mr. Thigpen as a rule is the head of that if he is there or Mr. Green if he isn't there, then as for working them in the car after they lay out the plans, then I go ahead with it quite a lot.

Q. Most of the time, in other words, you tell them what to do and they do it?

A. Yes, sir. Like I said while ago, a straw boss or foreman, you might say.

Q. Does Mr. Thigpen spend very much time in the warehouse looking after those things?

A. He spends quite a bit.

Q. About how much time a day would you say he spends at the warehouse supervising the loading and unloading of cars?

A. You mean trucks?

Q. Trucks or railroad cars when you have cars in.

A. That is a hard question because when he is there he is in and out. In other words, he knows what is going on at all times.

Q. But you are the one that actually directs that work, aren't you?

A. Mostly, yes, sir, but then he knows what is going on. You might say he is on the job too, even if he is in the office he knows what we are doing, see.

Q. Isn't it a fact that he spends most of his time out selling goods?

A. No, sir, I don't think I could say most of the time.

Q. Does he spend most of his time in the warehouse supervising your work?

A. That or in the office doing office work together.

Q. How much of that time would he spend in the warehouse.

A. Well, really that is a hard question.

Q. For instance, say last week, how many hours did Mr. Thigpen spend in the warehouse supervising the work for your department?

A. Well, the warehouse and the office is just merely a door between and a window between so he can see what is going on at all times; even though he is in the office he can see what we are doing in the warehouse, so that is why I say it is a hard question to answer because he may be in his office one minute and out in the warehouse the next. That is what I am trying to get at. It is a hard question. As for the amount of hours, that would be purely a guess with me.

Q. Isn't it a fact that actually you are the man that is responsible for the warehouse and the shipping department?

A. Yes, sir.

Q. And Mr. Thigpen is the manager of the branch?

A. That is right.

Q. Mr. Thigpen tells you he wants something done and you do it?

A. Yes, sir.

Q. If you tell this extra labor you want something done they do it?

A. Yes, sir.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr Shelton:

Q. Mr. Boykin, if Mr. Thigpen tells Bryant or Mitchell to do something they do it, don't they?

A. Sure.

Q. Does he tell them to do things?

A. Yes, sir.

Q. How often does that happen?

A. Well, I think I would be safe in saying every day, as for that matter.

Q. Since you have been with the company have you ever hired or fired any permanent employee?

A. No, sir.

Q. Have you ever recommended that any permanent employees be hired?

A. No, sir.

Q. I would like to develop the names of the employees of the company who spend over half their working time in the office or in the warehouse. Now, in the warehouse, what employees are there whose jobs keep them in the warehouse over half the time?

A. Well, I stay in the warehouse practically all the time, Bryant stays in the warehouse practically all the time and I think I would be safe in saying Mitchell stays in over half the time. He drives in the city but that doesn't take half the time.

Q. You are the only three who work in the warehouse regularly?

A. Yes, sir, we are termed the warehouse force.

Q. Who works in the office?

A. Mr. Green, Carrie Louise Anderson, Mr. Adams part of the time and Mr. Thigpen, you might say, part of the time.

Q. Now, as to Mr. Adams would you say he spends more or less than half his working time in the office?

A. Well, that is more or less a guess but then I think I would be safe in saying he spends half his time in the office.

Q. Then, counting Mr. Adams and Mr. Thigpen in the office, both of them spending part of their time there, there are four employees that work in the office and three employees that work in the warehouse?

A. Yes, sir.

Q. Now, Mr. Thigpen does some selling, doesn't he?

A. Yes, sir.

Q. Mr. Adams does some selling?

A. Yes, sir.

Q. Aside from them, how many salesmen does the company have?

A. We have two more.

Q. Do they spend time in the office?

A. Practically none.

Q. Now, you have named, then, some nine regular employees of the company?

A. Yes, sir.

Q. As I understand it, there are three that work regularly in the warehouse, there are two that can be said to work full time in the office?

A. Yes, sir.

Q. Two part time?

A. That is right.

Q. And two almost entirely out of the office?

A. Yes, sir.

Q. You say between the warehouse and the office there is a window and a door?

A. Yes, sir.

Q. State whether Mr. Thigpen's desk in the office is or is not on the side toward the warehouse.

A. It is.

Q. Is there a window by his desk?

A. Yes, sir, behind his desk.

Q. When he looks through that window what does he see?

A. He has got a full view of one side of the warehouse, you might say.

Q. Can he see from there the place where the trucks are unloaded through his window?

A. Yes, sir.

Mr. Shelton:

Your witness

Re-Cross Examination.

By Mr. Kurz:

Q. Do you keep any record on Mr. Adams' time?

A. No, sir.

Q. Does your occupation as shipping clerk keep you fairly busy?

A. Yes, sir.

Q. Then you really haven't got time or have any occasion to know as to how much time Mr. Adams or Mr. Thigpen spend in the office, have you?

A. No, sir.

Q. How long have Mitchell and Bryant been working for your company, do you know?

A. Mitchell was there when I went to work there and Bryant has been there over three years.

Q. Did you ever discharge any of the extra labor?

A. Well, no, sir, not just fire them, you might term it, not until we get through with them.

Q. You tell them when they are through, do you?

A. Yes, sir.

Q. Have you had any reason to discharge any of the extra labor, have any dificulty with any of them?
A. No, sir, we haven't had it.

Mr. Kurz:
That is all.

Mr. Shelton:
Q. When you hire the extra labor do you tell them they will only be employed for a short time?
A. Yes, sir.
Q. Then when that is over you tell them the time is up?
A. That is right.

(Witness excused.)

The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.

Witness Boykin:
May I make one explanation as to this time sheet? I keep that myself but I said I didn't keep any record of the hours. What I mean was any more than, in other words, after it goes in the office, see. I fill out that time sheet and turn it in to the office at the end of the week.

JOSEPH BRYANT, having been previously duly sworn as a witness on behalf of the Plaintiff, testified as follows:

776 Direct Examination.

By Mr. Shelton:
Q. You are Joseph Bryant?
A. Yes, sir.

Q. Are you now employed by the Capitol Paper Company?

A. Yes, sir.

Q. And that is part of the Jacksonville Paper Company?

A. Yes, sir.

Q. When were you hired down there, Joseph?

A. On March 10, 1943.

Q. Have you worked there continuously since that time?

A. Yes, sir.

Q. When you first worked there, how were you paid, on what basis?

A. Weekly basis.

Q. Do you remember what you got a week?

A. $17.38.

Q. Was there a time when your basis of payment was changed?

A. In December, 1944.

Q. Do I understand that change was about December, 1944?

A. That is right, along that time.

Q. On what basis were you put then?

A. $21.

Q. Was there a time when your basis of payment changed?

A. What do you mean?

A.[Q.] Beginning in December, 1944, did they start paying you in a different manner?

A. Just raise us 20 per cent, to $21.00.

Q. Have you ever been employed down there on an hourly rate?

A. Since that started.

Q. You have been employed on an hourly rate since you started?

A. I am on an hourly rate now.

Q. Have you ever been employed on a weekly salary?

A. Yes, sir.

Q. When were you employed on a weekly salary?

A. When I started in March, 1943.

Q. How long did you stay on a weekly salary?

A. Seven or eight months, ten months. I disremember now.

Q. What happened after that?

A. I was raised to $21 per week.

Q. How long did you keep on getting that amount?

A. Six or seven more months.

Q. What month would that have been?

A. I didn't keep up that close with it.

Q. Now, if I understand right, you say you are now employed on an hourly rate?

A. Hourly rate.

Q. Are you now employed on a weekly salary?

A. I get so much an hour and if I make any time it would still be the same.

Q. Do you always work the same hours now?

A. Yes, sir.

Q. At the present time, what time do you come to work in the morning?

A. Eight o'clock.

Q. What time do you go home at night on week days from Monday through Friday?

A. Six o'clock.

Q. How much time do you get out for dinner?

A. One hour.

Q. What hours do you work on Saturday?

A. Eight till one.

Q. How long have you been on that schedule?

A. Since 1943, the 10th of March

Q. Is it your understanding that if you should work more than fifty hours a week you would get paid more?

A. Yes, sir.

Q. Is it your understanding if you work less than fifty hours you get paid less?

A. Yes, sir.

Q. In other words, it is your understanding that you are paid on the actual hourly rates for the hours you work?

A. Yes, sir.

Q. Are you paid time and a half for any particular number of hours?

A. For all over forty hours.

Q. In other words, you are paid straight time for the first forty hours and time and a half for ten hours?

A. Yes, sir.

Q. State whether it was always your understanding that you were paid like that or were you formerly paid on a different basis?

Mr. Kurz:

Objection, because it calls for the conclusion of the witness.

The Witness:

Explain it again, I didn't understand exactly.

(Question read by the Reporter.)

The Witness:

That is what I don't understand. It was understood I was always paid like that since I have been working on the hour basis. It is understood I be paid by the hour.

Mr. Shelton:

Q. How long have you been working on the hour basis?

A. Probably eighteen months, something like that, I think. I will say half my time, probably over half.

Q. Before you were paid on an hourly basis, on what basis were you paid?

A. Weekly.

Q. Do you remember when you stopped being paid on a weekly basis?

A. Not to the exact date or month either one. I did not keep up with it.

Q. About half your time you were paid on an hourly basis and before that you were paid on a weekly basis?

A. Yes, sir.

Q. The time you were paid on a weekly basis was it your understanding you were building up any liability to the company?

A. No, I—

Mr. Kurz:

Objection. Strike the answer, on the ground it calls for a conclusion of the witness.

(Question read by the Reporter.)

A. I still don't understand what you mean by liability.

Mr. Shelton:

Q. Did you understand that you were working in such a way that you might owe the company back some of the money they paid you?

A. Was that understood?

Q. Yes.

A. No, sir.

Q. It was your understanding that all the salary you got you could keep without owing any of it back to the company?

A. All what they did not take out was mine.

Q. Except for deductions, you thought it was yours to keep?

A. Yes, sir.

Q. Now, at the time you were changed from a weekly basis to an hourly basis, did the company start to make any deduction from your wages other than the deductions that had been made before?

A. No, sir.

Q. Will you tell us, Joseph, what your job with the company is?

A. Truck driving and, I drove a truck and I helps in the house. What I am talking about, assist Mr. Boykin in shipping, getting up orders, wrap paper bags, pitch paper, help ship out.

Q. By the house you man the warehouse?

A. In the warehouse.

Q. About how many hours a day do you spend driving a truck?

A. I would say it would average two and a half or three.

Q. You work in the warehouse the rest of your time?

A. Yes, sir.

Q. Tell me whether your duties have been about the same all the time you have been there or has there been any change?

A. No, sir, because I have been on the road. I drove out of town.

Q. But since they took you off the road has your job been always about the same?

A. About the same.

Mr. Shelton:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. Do you keep a record of the hours you work down there?

A. Yes, sir.

Q. Is this the record that you kept for the week from May 13 to 18, 1946?
A. Yes, sir.
Q. Is that your signature?
A. This up here is, yes, sir.

Mr. Kurz:
We offer that record for identification as Defendant's Exhibit 3.

The paper above referred to, being a time sheet, was received and marked as Defendant's Identification No. 3.

Q. In addition to the $21 that you receive, do you also receive a bonus?
A. You mean in addition to my salary, what I receive now?
Q. Yes.
A. Yes, I receive a bonus, once a month.
Q. Are you being paid $21 a week now?
A. No, sir.
Q. How much do you get now?
A. $27.22 after they take out all the deductions.
Q. At the time you went to work for the company did you sign an application for the job?
A. I imagine I know what you are speaking of, but it has been a good while now.
Q. You don't remember?
A. I am honest about that, I can't remember.
Q. You have been keeping a record like this ever since you went with the company?
A. No, sir.
Q. When did you start that?
A. When I came off the road.
Q. You kept a different kind of record then?
A. Yes, sir.

Q. Since you have started working in the warehouse you have kept that sort of record?

A. Yes, sir.

Q. When did you start working in the warehouse?

A. When they pulled the truck off the road.

Q. Then, up to about last year you were driving a truck?

A. When I first started I started delivering around the city then I was put on the truck driving out of town, you know, delivering out of town.

Q. At that you were delivering in Georgia?

A. Georgia, Alabama and West Florida.

Q. When you started to work in the warehouse is when you started keeping that kind of record?

A. Yes, sir.

Q. Before that you kept a different kind of record with the number of hours you drove the truck?

A. Yes, sir.

Mr. Kurz:

That is all.

(Witness excused.)

The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.

(Hearing adjourned at 6:20 p. m.).

State of Florida,
County of Leon.

I hereby certify that the above and foregoing depositions were taken down as stated in the caption, and the questions and answers were reduced to writing by me; that the foregoing pages, numbered one to fifty-five inclusive, constitute a true and correct transcript of the

depositions given by said witnesses upon said hearing, and I further certify that I am not of kin or counsel to the parties to the action, nor am I in any wise interested in the results of said cause.

Dated this 30th day of May, 1946.

(Sgd.) LILLIAN HENRY.
(Lillian Henry)

State of Florida,
County of Leon.

I, Myra Sims, a United States Commissioner, duly commissioned and authorized to administer oaths and to take and certify depositions, do hereby certify that on May 24, 1946, the aforementioned witnesses, Carrie Louise Anderson, J. H. Green, Richard Fuller Boykin, and Joseph Bryant, who were of sound mind and body, were by me first carefully examined, cautioned, and duly sworn to testify to the truth, the whole truth, and nothing but the truth; that they thereupon testified as above set forth; that the depositions were taken down and were reduced to writing by Lillian Henry, Reporter; that the reading and signing of said depositions by the witnesses was waived by the said witnesses and by the said parties by their counsel.

I do further certify that I am not related by blood or marriage nor am I an employee or the attorney or counsel of any of the parties, nor am I a relative of or an employee of said attorneys or counsel or of the aforementioned witnesses, nor am I financially interested in the transaction.

In witness whereof I have hereunto set my hand and official seal this 3rd day of June, 1946.

MYRA B. SIMS,
(Seal) United States Commissioner.

(Seal, Myra B. Sims, United States Commissioner, Northern District of Florida.)

DEFT'S. EX. 1 FOR ID.

Daily Time Sheet.

Branch Tallahassee, Fla.

Name	In A. M.	Signature	Out Noon	Signature	In Noon	Signature
Carrie Louise Anderson	8.00	CLA	1.00	CLA	2.00	CLA
Carrie Louise Anderson	8.00	CLA	1.00	CLA	2.00	CLA
Carrie Louise Anderson	8.00	CLA	1.00	CLA	2.00	CLA
Carrie Louise Anderson	8.00	CLA	1.00	CLA	2.00	CLA
Carrie Louise Anderson	8.00	CLA	1.00	CLA	2.00	CLA
Carrie Louise Anderson	8.00	CLA	1.00	CLA	2.00	CLA

Approved W. R. THIGPEN, Manager.

Co

DEFT'S. EX. 1 FOR ID.

Daily Time Sheet.

Date 5/8/46

Out Noon	Signature	In Noon	Signature	Out P. M.	Signature	In	Out	After Hours Signature	Total
.00	CLA	2.00	CLA	6.00	CLA	....	....	.....	9
.00	CLA	2.00	CLA	6.00	CLA	....	....	.....	9
.00	CLA	2.00	CLA	6.00	CLA	....	....	.....	9
.00	CLA	2.00	CLA	6.00	CLA	....	....	.....	9
.00	CLA	2.00	CLA	6.00	CLA	....	....	.....	9
.00	CLA	2.00	CLA			....	....	.....	5
									50

, Manager.

Correct J. H. GREEN, Cashier .....

FOR ID. DEFT'S. #2.

Daily Time Sheet.

Branch Tallahassee, Fla.

Name	In A. M.	Signature	Out Noon	Signature	In Noon	Signature	Out P. M.	Signature	In	Out	After Hours Signature	Total
R. F. Boykin	8	RFB	12	RFB	1	RFB	6	RFB				9
R. F. Boykin	8	RFB	12	RFB	1	RFB	6	RFB				9
R. F. Boykin	8	RFB	12	RFB	1	RFB	6	RFB				9
R. F. Boykin	8	RFB	12	RFB	1	RFB	6	RFB				9
R. F. Boykin	8	RFB	12	RFB	1	RFB	6	RFB				9
R. F. Boykin	8	RFB	1	RFB	....	RFB	....	1 RFB	....	RFB		5
												50

Approved W. R. THIGPEN, Manager.

Correct J. I. N, Manager.

FOR ID. DEFT'S. #2.

Daily Time Sheet.

Date May 13 to 18-46.

Out Noon	Signature	In Noon	Signature	Out P. M.	Signature	In	Out	After Hours Signature	Total
12	RFB	1	RFB	6	RFB				9
12	RFB	1	RFB	6	RFB				9
12	RFB	1	RFB	6	RFB				9
12	RFB	1	RFB	6	RFB				9
12	RFB	1	RFB	6	RFB				9
1	RFB	....	RFB	....	....	....	....	....	5
									50

Correct J. H. GREEN, Cashier

#3 DFT'S.

Daily Time Sheet.

Branch Capital Pa. Co.

Name	In A. M.	Signature	Out Noon	Signature	In Noon	Signature
J. Bryant	8	J. Bryant	12	J. Bryant	1	J. Bryant
J. Bryant	8	J. Bryant	12	J. Bryant	1	J. Bryant
J. Bryant	8	J. Bryant	12	J. Bryant	1	J. Bryant
J. Bryant	8	J. Bryant	12	J. Bryant	1	J. Bryant
J. Bryant	8	J. Bryant	1	J. Bryant		

Approved W. R. THIGPEN, Manager. Corr

#3 DFT'S.

Daily Time Sheet.

Date May 13 to 18-46.

Out Noon	Signature	In Noon	Signature	Out P. M.	Signature	In	Out	After Hours Signature	Total
12	J. Bryant	1	J. Bryant	6	J. Bryant				9
12	J. Bryant	1	J. Bryant	6	J. Bryant				9
12	J. Bryant	1	J. Bryant	6	J. Bryant				9
12	J. Bryant	1	J. Bryant	6	J. Bryant				9
1	J. Bryant								5
									41.

N, Manager. Correct J. H. GREEN, Cashier

otal

783 GOVT. EXHIBIT 17.

Filed in Evidence Jun. 26, 1946.

D. Filed Jun. 26, 1946.

(Title Omitted.)

Depositions of Witnesses taken at Orlando, Florida, June 11th, 1946, and at Lakeland, Florida, June 11, 1946.

In the District Court of the United States for the Southern District of Florida, Jacksonville Division.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff,

vs. Civil Action File No. 209-J.

Jacksonville Paper Company, a Corporation, et al., Defendants.

I, William H. Horne, a Notary Public of the State of Florida at Large and an officer authorized by law to administer oaths, do certify that pursuant to the stipulation of the above parties by their counsel dated May 16, 1946, and filed on May .., 1946, I did on June 11th, 1946, at 10 o'clock a. m., at Room .. Post Office Building, Orlando, Florida; proceed to take the depositions of Theodore H. Ennis, Walker Williams, Margaret R. Furber, Theodore Benjamin, G. S. Fairfield, Eugene Lallance, Herman Richardson, who, after being by me first duly sworn, testified as hereinafter set forth, said testimony being oral examination, being transcribed by me, and reduced to writing by me, pursuant to said stipulation.

WILLIAM H. HORNE.

(Notarial Seal) Notary Public.

There were present George A. Downing and James H. Shelton, Attorneys for the Plaintiff, and Louis Kuz, Attorney for the defednants.

It is understood and agreed that the stipulation entered into at Savannah extends to the depositions taken at all of the branches during the preparation for the trial in the original proceedings, subject to the same qualifications as there noted.

Thereupon, THEODORE ASA ENNIS, first duly sworn as a witness in said cause, testified as follows:

791 Direct Examination.

By Mr. Downing:

Q. What is your name?

A. Theodore Asa Ennis.

Q. You are manager of Central Paper Company at Orlando, Florida?

A. Yes.

Q. That is a branch of the Jacksonville Paper Company?

A. Yes.

Q. How long have you been manager of the Orlando branch?

A. May 1, *19340*.

Q. You were manager then at the time of the original trial in this cause?

A. Well, I presume you have reference to the people coming through and taking statements from the employees, and then later on calling a trial in Jacksonville?

Q. Yes.

A. That is right.

Q. Mr. Ennis, were you manager last September when Mr. Charles M. Carter, Inspector of the Wage and Hour Division made an inspection here of the Central Paper Company?

A. I don't remember the man's name but he talked to some of the employees.

Q. Did he talk with you?

A. No, sir.

Q. Whom did he present himself to when he came in?

A. I thought you meant did he take my statement. He came in and told me who he was and wanted to talk to the employees and I told him to go ahead.

Q. Did he ask you any questions about the amount of business or the quantity of business you did?

A. No, sir, I referred him to the Jacksonville Paper Company.

Q. I will ask you if you know from whom he got this information, and I show you a summary of purchases for the month of August, 1945, made by the Jacksonville Paper Company and state if you know whether he got that from you or from Fairfield or from whom? Did you refer him to Mr. Fairfield for any information?

A. No, sir.

Q. You don't know whether he conferred with Mr. Fairfield or not?

A. No, sir.

Q. Does any of the merchandise which you distribute come from points direct to you from other States?

A. From out of the State?

Q. Yes.

A. In some instances a great deal of the stock comes in a car lot and perhaps would stop at the other branches and then come through here and we would take out a portion of it.

Q. Which branches would it come to before it came to you?

A. Jacksonville. Sometimes they come through here and unload a portion of it and go on to Lakeland and Tampa.

Q. In some cases you get what is left in the car when it has been partly unloaded in Jacksonville, and in some cases you get the car first and the remainder goes to Lakeland and Tampa?

A. Yes, sir.

Q. Do you get any full car shipments direct from out-of-state points?

A. No.

Q. I will ask you again, Mr. Ennis, to examine this memorandum or summary of purchase for August, 1945, and after examining it; state, first, whether the total purchases for the month of August are approximately correct, according to your best recollection?

By Mr. Kurz:

I object to the question on the ground that the records would be the best evidence.

A. You want an approximation, in other words, not a definite statement?

Mr. Downing:

Q. Well, I will ask you the question this way, Mr. Ennis. Is $18,000 the approximate of your purchases for August, if you know?

A. I don't know.

Q. About how much does your total monthly business run on the average?

A. Well, approximately $15,000.00.

Q. Can you state what proportion of that comes to you direct by way of rail or truck from out-of-state points?

A. Well, perhaps 49 per cent or such a matter.

Q. Are you including in that the partial carloads which have been partly unloaded in Jacksonville?

A. Well, that is a hard statement for this reason that in some months we will get several cars from up the country and then again in another month we won't get but one.

Q. When you say from up the country, you mean outside of the State?

A. Yes.

Q. Do you get truck shipments within the State?

A. We get less than carload shipments by railroad and once in a while by truck line.

Q. How often do you get less than car shipments?

A. We may get three or four in one day and none for four days.

Q. How are these less than carload shipments received by you? How is delivery made?

A. It is made by way of truck lines or a truck which has a franchise to deliver for the railroad.

Q. The railroads deliver these less than car loads by its own trucks or truck carriers?

A. By truck carriers I think.

Q. They deliver directly to the warehouse?

A. Yes.

Q. Which of the railroads have a siding to your warehouse?

A. The ACL.

Q. Does the Seaboard deliver by a siding?

A. No, sir.

Q. How do you get shipments from the Seaboard?

A. They are turned over to the Coast Line and they deliver them on their truck, and lots of times they refused to take it.

Q. Who refused to take it?

A. The ACL claimed the Seaboard would not give it to them and the Seaboard claimed they would not take it.

Q. How did you get it?

A. By hauling from the car by our own truck.

Q. How frequently did you get less than car load shipments?

A. You asked that question a while ago.

Q. I believe I did. What was your answer?

A. One day we would get three or four and maybe go three or four days without getting any.

Q. Would it be correct to say you got them every week?

A. Well, we might get from one to five or six within one week.

Q. Do you handle any goods for customers which are printed or otherwise marked or designated by these customers by manufacturers?

A. You mean do I receive goods with the customers' names printed on it?

Q. Yes.

A. Yes.

Q. Will you state for what customers you got such goods?

A. Well, I might name one but I can't sit here and tell you all of them.

Q. Suppose you name the one?

A. Eola Coffee Company for one, here in Orlando.

Q. What goods do you know they have printed or otherwise marked with their name?

A. Gum tape.

Q. Who do they get it from?

A. Central Paper Company, Menosha, Wisconsin.

Q. Do you get any other goods from that company which are marked with the names of other customers?

A. No.

Q. You said you could name one and indicated there were others. About how many other customers do you have from whom you order goods that are already marked or printed by the manufacturer?

A. There is no regular number of customers, because for instance we may get his order for printed merchandise one time and never get it again, and then again we may have several in a month.

Q. But Eola Coffee Company is a regular customer who orders that item?

A. No, sir, the first order we got from them. I just happen to remember it because we handled it today.

Q. Is Dixon Ives a customer of yours?

A. Yes.

Q. Do you supply them with clothes boxes that are printed or marked with their name?

A. Yes.

Q. Is that an item which they regularly order through you?

A. Yes, sir.

Q. How frequently?

A. Sometimes once a year and then again it will be twice. It just depends on the quantity they use.

Q. Is Tuthill a customer of yours?

A. Yes, sir.

Q. Do you supply them with any goods that are printed with their name?

A. We have in the past furnished them with pastry boxes printed in Jacksonville.

Q. By whom?

A. Southern Industries.

Q. Ever furnish them with any pie plates printed with their name?

A. No, sir.

Q. Who printed the clothes boxes for Dixon Ives?

A. The American Box Company, Grand Rapids, Michigan.

Q. Do you make purchases from the Baltimore Sales Book Company?

A. Yes, sir.

Q. What items do they supply you?

A. Sales books.

Q. Anything else but sales books?

A. That is all I recall at present.

Q. Are these sales books there printed specially by the company for particular customers?

A. Yes, sir.

Q. Which customers?

A. Well, we have printed some for Tuthill's as I recall.

Q. Do any of your restaurant customers require printing on their boxes?

A. I don't recall a single instance within the past two years.

Q. Other than Tuthill?

A. I don't recall any other customer right at the present time.

Q. Do you have a customer known as A. Tomlinson, Grocery at Groveland?

A. I believe we do.

Q. Do you furnish them with gum tape as per the customer's order?

A. I don't remember the order.

Q. I am asking you to look at the summary, particularly the one dated October 13, 1945. Will you look at that notation, please, and see if that will refresh your mind?

A. I would not say it was actually shipped to them unless I could see the original order.

Q. You notice in front, "Per Customer's Order".

A. Yes.

Q. Do you have other customers who order goods with the same direction for printing?

A. Occasionally.

Q. Do your records contain copies of invoices which will indicate which cases these special orders were handled for printed labels and other special printing?

A. We give the customer an invoice and he signs the proper receipt for any merchandise delivered to him.

Q. Which of your records will indicate whether the goods were specially printed or not?

A. The invoice to him and our receipt from the customer.

Q. What about the order that you place through your Jacksonville office, your own order to Jacksonville?

A. It woud carry the information that it was to be printed.

Q. That information, then, is available in your records?

A. Why, I imagine it is.

Q. It will be available in the invoice you issue to your customer and in the receipt you take from the customer, is that correct?

A. Yes.

Q. It will also be available in the order in which you place that order in Jacksonville?

A. Will have to be.

Q. Is it not true that all orders which you place for merchandise are placed through the home office in Jacksonville?

A. Every single order that is placed for Central Paper Company is placed through the Jacksonville Paper Company regardless of what it might be for.

Q. Are your invoices filed in your branch alphabetically or according to the customer's name each day?

A. It is filed alphabetically.

Q. According to the name of the customer?

A. Yes.

Q. How much of a job would it be to assemble the invoices of your special orders?

A. Well, you would not have them together at all. They would be all through the place.

Q. You would have to go through all of your invoices?

A. Yes, sir.

Q. Would it be easier to assemble them from the invoices and receipts or from the original orders placed with the Jacksonville Paper Company?

A. That would be according to the way the Jacksonville office kept their records.

Q. Do you have a copy here of the orders placed with Jacksonville?

A. We usually keep them until they come in.

Q. Do you have any paper forks, paper spoons specially printed for your customers?

A. There have not been.

Q. Did you ever have them?

A. No, sir, not that I remember.

Q. Do you handle any printed cocktail forks or spoons which are specially printed?

A. No.

Q. Do you have any of these things they use around the cocktail lounge, these printed swizzle sticks for stirring drinks?

A. We have had those plain, just a plain stick. They are spears.

Q. Mr. Ennis, do you get any paper cups from the Dixie Cup Company?

A. I have seen them. I don't have any now.

Q. Does the Dixie Cup Company ever print any of its products specially for its customers?

A. In some instances.

Q. Which customers?

A. Snyder's Creamery at Eustis. In the past it has printed lids to go on top of ice cream cups.

Q. How recently has that been?

A. Well, I imagine we have billed him some since the first of the year. I don't recall how many.

Q. 1946?

A. I think we have. I am not positive.

Q. Do you have any dairy or ice cream customers other than Snyder's?

A. Oh, yes, we have Foremost and Borden's Poinsettia Dafries.

Q. Have you ever supplied them with specially printed ice cream cups? Or pails and so forth?

A. We haven't yet.

Q. Do you contemplate doing so?

A. Well, we just hold a hope, like any salesman.

Q. Do you have any existing agreement or understanding with these customers or any others for bulk deliveries over a period of time, standing orders, for instance?

A. We occasionally get a contract with Snyder's. He just tells us he will take so many cups and says send us so many a month until they tell us to stop. They are shipped direct.

Q. What company supplies these cups?

A. In that particular instance, Dixie Cup Company.

Q. How long a period of time has that arrangement existed?

A. There is no set time. Whenever he deems it necessary to purchase cups or he changes his method of selling his ice cream.

Q. My question is how long has the arrangement been in existence for these periodic deliveries?

A. Well, maybe the past couple of years.

Q. How many items a month does the arrangement call for?

A. Well, it could be one to three.

Q. One to three what?

A. For instance, it might be cups that he would buy and say he would want ten to fifteen thousand for each month, and then again he might order within the same month the lids on the same basis. There is nothing said definitely about a thing of that kind.

Q. You mentioned cups and lids. What others were there?

A. I mean by that there is two size lids and two size cups.

Q. Did you tell me the name of the manufacturer of these?

A. The Dixie Cup Company.

Q. Did they always ship these goods directly to the customer?

A. In most instances.

Q. In what instances would they not do it?

A. For me to tell them to ship it to me.

Q. What was the reason for that, you having the shipments made direct to you?

A. It may be that he didn't want all the shipment at the same time and might bring it to my warehouse and deliver part of it at one time and part at another.

Q. How often does that happen?

A. It has not happened recently.

Q. How recently since this happened?

A. I don't recall it having happened?

A. I don't recall it having happened. I think you asked me how else could it handled, could it be possible for them to be brought into my warehouse, or was there some other means to give them to them.

Q. What I asked, was that always shipped directly to the customer and you said yes.

A. Yes, sir.

Q. Where is the Dixie Cup Company located?

A. One plant is at Darlington, S. C., I believe. They have several places.

Q. Did your customers receive shipments from it from any point in Florida?

A. Well, Snyder's is the only one I recall.

Q. All the plants of the Dixie Cup Company are outside of Florida?

A. As far as I know.

Q. What customers other than Snyder have you made arrangements similar to those which you have just described for regular periodic deliveries?

A. I don't recall any others at the present.

Q. That is the only one that you ever had such an arrangement with?

A. Yes.

Q. Did you receive any bottle caps specially printed or marked for particular customers?

A. No, sir.

Q. You supply any goods to Aaftak, Army Air Force?

A. We have.

Q. Do they order any special types of goods that the other customers do not order?

A. I don't recall any such order.

Q. Do they order any goods specially printed or otherwise marked for them?

A. I don't recall any such order.

Q. Is South Parramore Grocery a customer of yours?

A. I think so.

Q. Have you on occasion supplied them with gum tape with their names printed on it?

A. Yes, I believe we have.

Q. Who supplied that to you?

Q.[A.] The same company.

Q. What company is that?

A. Central Paper Company.

Q. In Menosha, Wisconsin?

A. Yes.

Q. Have you received such order more than once from that customer?

A. I don't recall how many orders we have received.

Q. Do you have a customer named J. S. Reddick? At Oakland, Florida?

A. I believe so.

Q. Have you furnished them with the sales book furnished by the Baltimore Sales Book Company?

A. I believe so.

Q. That concern is in Baltimore, is it not?

A. Yes.

Q. Do you have a customer known as Brown & ...?

A. Yes.

Q. Do you remember a sales book for them printed by the Baltimore Sales Book Company?

A. No, I don't remember that one.

Q. In marking or designating your contracts or evidence of agreements with customers, do you remember marking a contract No. 68 for customer's labels, 400,000 cups?

A. No, sir.

Q. I ask you to look at this item August 27, 1945, indicating an order on Harvey Paper Company of Sturgis, Michigan. Will you look at that?

A. 400,000 cups, $99.00, customer's label contract 16. No, I don't remember that.

Q. Do you know for whom those cups were ordered?

A. No, sir.

Q. I see that that order was placed and the shipment made in August of last year. Can you recall whether all these cups were for the same customer?

A. I don't recall the order.

Q. What do you ordinarily get from the Harvey Company?

A. Baking cups and souffle dishes.

Q. To which of your customers do you ordinarily supply these items?

A. The bakeries buy the baking cups and the souffle dishes are purchased by restaurants.

Q. Do any of the bakeries or any of the restaurants order any of these goods specially labelled or printed?

A. No, sir.

Q. Have you a customer named Morris Grocery and Market?

A. Where?

Q. At Leesburg, Florida.

A. I don't recall the account right now.

Q. Under those orders you don't recall an order for specially printed tape for that concern?

A. No, sir.

Q. You recall an order or sale made to the Superintendent of Public Instruction of Brevard County in Titusville, last August?

A. I recall selling them some merchandise. What it was I don't recall.

Q. Do you recall whether it was crayons?

A. I am not sure just what it was. I would sell him some merchandise.

Q. Do you generally carry crayons in stock?

A. Yes, we do.

Q. Who supplies those to you?

A. The American Crayon Company, Sandusky, Ohio.

Q. You supply crayons to any others?

A. To the grocery stores.

Q. They are stores that deal in school supplies?

A. Some of the groceries handle school supplies to accommodate the children in school.

Q. Are any of these crayons or school supplies specially marked or printed?

A. No, sir.

Q. Do you have a customer known as Barnett's Florida Foliage, at Fern Park?

A. Yes.

Q. You recall an order of paper specially printed and shipped from Patterson Parchment Paper Company?

A. We have some accounts, some butcher paper. They were not printing paper during the year 1945.

Q. Have you supplied Barnett's with printed paper from anyone else, at any time?

A. Not that I recall.

Q. Have you supplied Barnett's with any other special item?

A. I would not call it special, having sold him some twine or wrapping paper.

Q. Can you state, Mr. Ennis, approximately the number of items that you carry in stock?

A. I can't give you a definite number. It would be just a guess.

Q. Would it be in the hundreds?

A. Well, you want me to guess?

Q. Well, your best estimate?

A. I would guess about fifteen hundred.

Q. Now, I take it that in addition to those stock items, you sometimes get orders from your customers for goods that you don't regularly carry in stock?

A. Yes.

Q. And when you get such orders, what do you do?

A. I place the order with the Jacksonville Paper Company for them to handle.

Q. And what becomes of it after that?

A. They send it to any mill they wish.

Q. Are the goods supplied?

A. Not in every instance.

Q. And how is delivery made? Do the goods come to you in Orlando or direct to the customers?

A. Sometimes they come to us and we deliver and sometimes it comes direct.

Q. How often do you get orders from your customers for goods that you do not regularly stock?

A. Maybe in one week we would not get but one and in another week it might be six or seven.

Q. Is it generally customary for these goods to be shipped from the mill direct to the customers or is it customary for you to deliver them yourselves?

By Mr. Kurz:

Objected to because it assumes a custom which has not been shown to exist.

By Mr. Downing:

I will withdraw the question.

Q. With reference to orders which you place for goods not regularly carried in stock, is there any general custom about whether they will be shipped direct by the mill to the customer, or is there any custom that they will be delivered by your branch here?

A. There is no set specific method for handling this.

Q. Are they handled just as any other orders?

A. They are handled to the best advantage of the customer and ourselves.

Q. That is true in the case of orders, is it not?

A. Yes.

Q. Well, in order that the record may be entirely clear, Mr. Ennis, will you state in what manner or routine they handle these orders different than handling any other orders?

A. Well, if the customer gives us an order and we don't have it in stock, we send the order to the Jacksonvile Paper Company, who in turn handles it to the best advantage.

Q. And that is customary in all cases?

A. Any special orders that we do not have in stock.

Q. Now, let's turn to the lines that you regularly do carry in stock, those fifteen hundred odd items one way or the other. Does it ever happen that your stock should become exhausted in certain lines before you receive a fresh supply?

A. Well, that has happened on different items at times.

Q. And when your stock is so temporarily exhausted, does it ever happen that you receive orders from customers for these items?

A. Well, we could receive an order and yet not fill it.

Q. What do you do when you get such an order when your stock is temporarily exhausted?

A. Well, if we think it possible that the merchandise may come in within a reasonable length of time, we write an order for it and ship it on arrival. If we don't think it will come within a reasonable time we tell the customer we can't handle it.

Q. Suppose at the time you receive the order you discover that you have no order on file with the home office for that particular item, what do you do?

A. Advise the customer of when we will be able to fill the order.

Q. And then do you place an order with Jacksonville for the goods?

A. Well, naturally we place the order with Jacksonville for any item that we thought we could get that they have been regularly handling or stocking.

Q. During the war years has there or not been a shortage of many paper items which you normally carry in stock?

A. Yes, sir.

Q. By reason of that fact, did you, during the war years, frequently receive orders from your customers for goods which were not in stock?

A. We would ask for goods which we need in stock. We can't take an order and fill it unless we had the goods.

Q. And did you place orders with Jacksonville for such goods as had been ordered by your customers?

A. Well during the war, the shortage of merchandise, we had to take what the mills could afford to let us have and fill orders out of that, what we got.

Q. Did you or not, nevertheless, continue to place orders for the goods which your customers were requesting from you?

A. The only time we placed any special order for a customer is when it is specially for that customer and it is possible to get it.

Q. That is not the point I am getting at. I am speaking now of items which are normally stocked but which because of the times and conditions you were unable at times to supply from your stock. As to those items did you continue to place orders from the manufacturers regardless of the fact that these orders were not always filled?

A. We don't place orders with the manufacturers. Jacksonville does that.

Q. Did you place that with Jacksonville?

A. On the extremely short items they place the order, we don't. We write them letters and ask when it is possible for us to have it, for instance butcher paper, which is a very short item, or craft paper.

Q. Although the item was a short one, you continued to get orders or requests from your customers for it?

A. Yes, but when we can't supply that, we don't take the order.

Q. And you continued to ask the Jacksonville office to supply you with the item?

A. We would write them a letter about it and they would give us an order for our account for what they can, and that depended on the amount of business we could do and the amount of merchandise they were able to get from the mills.

Q. I assume that frequently during the war years shipments you received would be in a lesser quantity than were required to meet your demand. Is that correct?

A. We haven't been able to get near enough to meet the demand.

Q. Because of that did you have any practice or custom of alloting portions of the incoming shipments among your customers?

By Mr. Kurz:

Objected to on the ground it is immaterial and irrelevant.

A. We tried to give the customers the amount of merchandise in proportion to the amount we received and in proportion to the amount of that particular item they were buying from us during normal times.

Q. Even though it might be considerably less than they wished?

A. That is right.

Q. Mr. Ennis, will you explain the organization here in the Central Paper Company? I believe you are manager.

A. Yes.

Q. And who is the cashier?

A. Mr. G. S. Fairfield.

Q. Are there one or more clerical employees in your office?

A. Yes, we have a stenographer.

Q. Do you have a bookkeeper?

A. Mr. Fairfield is cashier and bookkeeper.

Q. There is no bookkeeper other than Mr. Fairfield?

A. That is all, excepting what books are kept in Jacksonville.

Q. So there are only two office employees—Mr. Fairfield and the stenographer?

A. Yes.

Q. Do you have some warehousemen?

A. We have had but we lost one of the men a while back and the warehouseman you might say drives the truck part of the time.

Q. Do you have a shipping clerk and a receiving clerk in your warehouse?

A. Yes, Virgil Marchand. He does both jobs. He has only been with the firm since about January this year.

Q. Who is the shipping clerk?

A. We don't have one. Mr. Fairchild handles some of that and I handle part of it.

Q. Up until January you and Mr. Fairchild handled the shipping clerk's duties?

A. Yes.

Q. Who did the most, you or Mr. Fairchild?

A. I expect he did.

Q. How many truck drivers do you have?

A. Ordinarily two.

Q. One for the city and one, the country?

A. No, they operate in the city.

Q. How many do you have now?

A. Two.

Q. Do they do the warehouse work?

A. When they are not on the trucks they come in the warehouse and work, and help.

Q. When they are busy with their deliveries, who does the warehouse work?

A. That is the reason we have a warehouseman. He usually stays there and looks after it.

Q. But I understand you don't have one now?

A. No, sir, not permanent. We pick up an extra fellow every now and then to help us.

Q. You carry it on extra labor voucher?

A. Yes, sir.

Q. What are the regular office hours at the Paper Company?

A. From eight o'clock in the morning during the week days to six o'clock at night.

Q. How much time off for lunch?

A. One hour, and on Saturdays from eight o'clock to one o'clock.

Q. Do the clerical workers also work that schedule?

A. Yes, sir.

Q. And the warehouse men?

A Yes.

Q. And the truck drivers?

A. Yes, sir.

Q. Does it ever happen that any of them ever work extra hours outside of that schedule?

A. Once in a while they work longer.

Q. When they do work longer are these hours recorded on the daily time sheets on which employees sign in and out?

A. So far as I know, they are.

Q. Are you aware of the hours worked by the truck drivers?

A. I think I know what they work.

Q. Do they always report for work at eight o'clock?

A. In most instances. Once in a while they are five or ten minutes late.

Q. Is it not correct that on long runs on Thursdays and Fridays, the truck drivers leave as early as 7 or 7:30?

A. Not that I know of. They have instructions not to leave before eight o'clock.

Q. At one time did you have in your branch office an assistant bookkeeper?

A. I believe the girl was classed as that.

Q. And whom did she assist?

A. Mr. Fairfield.

Q. How long has it been since you have had an assistant bookkeeper?

A. I think she left about January 1st, as I recall.

Q. 1946?

A. Right.

Q. Who was that?

A. Her name was Alice Brower, I believe was her maiden name and she married just before she left.

Q. Her name then became Butler?
A. Right.
Q. What does Mrs. Furber do now?
A. She is the stenographer and does the billing and filing.
Q. She is the stenographer?
A. Yes.
Q. As branch manager whom do you supervise?
A. Well, I have general charge of everything there.

Cross Examination.

By Mr. Kurz:

Q. Mr. Ennis you testified about part cars that came consigned to Central Paper Company. Where do these cars originate?
A. I believe that one such source of supply is Waterville, Maine, Keystone Fiber Company.
Q. What do you get from there?
A. Packer's trays and pie plates.
Q. How often do you get a part car from these people?
A. It might be from one to three times a year. There is no set number of times.
Q. How long would it take to unload such cars when they come in?
A. It may be two hours.
Q. Who does that unloading?
A. We use one truck driver and the warehouseman or perhaps just the warehouseman and the shipping clerk will assist him in some instances.
Q. What other merchandise do you get by way of part cars?
A. Craft paper.
Q. How often do you get that?
A. They come in maybe six or seven times a year, or such a matter.

Q. Do those cars come from out of the State?

A. Yes, sir.

Q. How long would it take to unload your portion of that merchandise?

A. Probably take from one to three hours.

Q. Do that same type of employees handle that unloading that you just testified about?

A. Yes.

Q. Now, do you get any goods and merchandise from the main warehouse at Jacksonville?

A. Very seldom. Some of it does come from there, unless you are classifying Southern Industries as a part of that warehouse.

Q. Yes, I am. What proportion of the merchandise you sell comes from Jacksonville Paper Company at Jacksonville or from Southern Industries at Jacksonville?

A. What proportion?

Q. Yes.

A. Well, I can't give you a definite answer. The only thing I could do would be to guess at it. It would be around a little over fifty per cent.

Q. Would you say that you get as much as 49 percent of your merchandise direct from out of the State?

A. It could be. Now, I will not say that positive.

Q. You testified on direct examination that 49 percent of your merchandise came from out of the State.

A. Well, I gave that as approximate.

Q. Well, is that correct to the best of your knowledge? Do you get as much as that from out of the State?

A. That was just a guess. In other words, not a definite answer.

Q. You said your total monthly business was $15,000. Do you mean sales or purchases?

A. I said $15,000 could be the approximate amount. That is not a definite answer either.

Q. Does that refer to sales?

A. Just to sales.

Q. How often do you get less than carload railway shipments direct from out-of-state points?

A. They vary.

Q. Do you get that once a week or more often?

A. Well, some weeks we get maybe one or two or three, then another week, I mean for several weeks, we won't get anything.

Q. I believe you said those less than carload shipments were unloaded by the railroad company or its trucks?

A. Yes, sir.

Q. In to your warehouse?

A. Into our warehouse, yes.

Q. Do you get any truck shipments from Jacksonville, from the company?

A. Not at the present.

Q. You said that you sold gum tape with the name of Eola Coffee Company. How often do you sell that? Is that the only order you ever had?

A. That is the only order that I recall from these people.

Q. How often do you get orders from Dixon Ives for printed books?

A. It depends entirely on the quantity they use. They might place an order once or twice a year, and it may be almost twelve months before they replace another order.

Q. When was the last order that you had from Dixon Ives?

A. Within the past sixty days, I believe.

Q. Where was that shipped from?

A. Southern Industries.

Q. From Jacksonville?

A. Yes.

Q. When was the last shipment that you had from the Company you replaced that merchandise printed for Dixon Ives?

A. As I recall, it was last year.

Q. How many times a year would you get orders of that sort?

A. Well, it would be from one to maybe two times a year.

Q. Who makes these orders from here, from your office, who handles them?

A. Well, I write the specifications, turn that over to the stenographer and she types them and they are sent to Jacksonville.

Q. Does that happen every day or every week that she types an order like that?

A. No, sir, it varies. It depends entirely on the number of orders we get.

Q. About how many orders of that kind do you get per month?

A. Mr. Kurz, there is no stipulated quantity. There might be one in one month and might be one in six or seven.

Q. When was the last order you had from Snyder for Dixie Cups?

A. I think it was in February.

Q. How many orders a year do you get from him approximately?

A. Well, the approximate number is, I believe, one to two.

Q. Do these cups have his name printed on them?

A. No, sir.

Q. How many orders have you had in this year from Snyder's for lids?

A. I think there has been two.

Q. Those have his name printed on them?

A. Yes, sir.

Q. And where do they come from, where is his printing done, do you know?

A. I believe it is Darlington.

Q. South Carolina?

A. Yes, sir. I believe that is right.

Q. How often do you have an order from South Paramore Company for tape?

A. I don't recall but one.

Q. They had their name printed on it?

A. Yes.

Q. How long would it take to handle an order of that kind through your office? I mean how much time would be consumed in your office in placing such an order?

A. That would cover the time of the girl typing it?

A.[Q.] Yes, how much of her time would be taken writing up such an order?

A. Less than a minute, I would say.

Q. And these orders, I believe you said, were mailed to the Jacksonville Paper Company?

A. Yes, sir.

Q. And that is shipped direct to the customer?

A. Not in every instance.

Q. In those instances where they are not shipped direct to the customer, do they go to the warehouse?

A. Yes, sir.

Q. Who handles them in the warehouse?

A. Why, the warehouseman or it could be the shipping clerk or trucker who happened to be there.

Q. How long would it take him or whoever handles it at that particular time to bring it into the warehouse and check it out?

A. Well, that would depend entirely on the size of the shipment, in other words, the weight of it and the number of packages, with the percentage small.

Q. What part of the time of your warehouse employees is consumed in handling that particular type of

shipment of merchandise with the customer's name printed on it?

A. Possibly one or one and a half per cent.

Q. That would be in that particular week when the shipment did arrive?

A. Yes.

Q. Now, with reference to your testimony about goods not in stock, that you then order when the customer comes in, you order through Jacksonville, who handles those orders?

A. Well, now.

Q. I mean items that you do not usually carry in stock?

A. Who handles that order?

Q. In your jurisdiction?

A. The order is turned over to me. I see that the specifications are written correctly and I turn it over to the stenographer for typing and it is sent to Jacksonville.

Q. Do you have orders of that kind every day?

A. No, sir.

Q. [A.] We have been some weeks without them.

Q. How much time is consumed in handling an order of that kind? I mean writing up that order and the typing?

A. I imagine the typing would take about a minute and maybe a minute and a quarter to see that it is written up correctly.

Q. The stenographer's time would be about a minute or so?

A. Yes.

Q. With reference to the items that you do carry in stock but which you happen to be out of from time to time, do you place any special order when the customer comes in for those or do you just place an order for the quantity of that type of goods?

A. That is a regular stock item you have reference to?

Q. Yes.

A. We place an order for what we have to use to distribute to our trade, not just a special order.

Q. Suppose John Smith comes in and wants a roll of butcher's paper, and that is an item you handle, carry in stock and are out, do you then place an order for one roll of butcher paper for John Smith?

A. No, sir.

Q. Do you order one roll of paper from Jacksonville?

A. No, sir.

Q. On items that you usually carry in stock, then, if I understand you, you just place an order for the quantity that you think you need for all your customers, is that right?

A. We can estimate in Jacksonville what we would like to have and we have to take our portion, whatever it may be.

Q. Do you place an order for as much as you need for all of your customers, or do you make a special order from Jacksonville for the requirements of a particular man?

A. No, sir, we make up an order that would take care of all of the customers, not just one.

Q. Do you keep an inventory of the merchandise you have on hand?

A. Jacksonville does.

Q. Well, do you keep the stock records?

A. We keep a stock record on the printed paper.

Q. Do you wait until you are out of a stock item before you place an order for a new supply?

A. No, sir.

Q. How do you keep up with your anticipated requirements in that respect?

A. Well, on the fine paper, we can refer to the stock records and see what we have, and on the coarse paper,

we go through the stock once a week and if we see we are short, we place an order.

Q. In other words, you try to keep that stock replenished so you will have it on hand all the time with reference to the items you regularly carry in stock?

A. Yes, sir.

Q. And when you run out of items of that kind, as I understand it, that is due to the shortage of that particular type of merchandise and the difficulty of getting it, from that fact?

Q. Have you been able to employ all the warehouse help and office help that you need?

A. Well, not with the shortage of labor. It has been a little hard to find.

Q. Is that the reason you don't have a regular warehouseman?

A. No, we expect to put on a warehouseman when we find the right man that will want to work.

Q. Can you estimate the percentage of merchandise sold through the Central Paper Company branch which has the customer's name printed on it with reference to the total volume of business?

A. Just that specially printed?

Q. Yes.

A. Well, it is very small. That may run maybe one or two percent or such a matter.

Q. What about the percentage of goods that you order for special customers, these orders that are placed specially for any particular customers like these Dixie cups and things like that, items not carried in stock?

A. Not carried in stock?

Q. Yes.

A. The percentage would be very small. I would not estimate exactly what that would be. It is very small.

Q. Would you say it is as small as one per cent of your total sales? I have reference now to the items that

are specially ordered, the merchandise that you do not ordinarily carry in stock? Would you say it is as small as one per cent?

A. As small as one per cent?

Q. More or less than one per cent?

A. The chances are it would be less than one per cent.

Q. Do all of these items of that sort come from out of the State or do some of them come from Southern Industries and the Jacksonville Paper Company?

A. A great percentage of it came from Jacksonville Paper Company and Southern Industries.

Re-Direct Examination.

By Mr. Downing:

Q. What percentage of the orders received by you during the war years was the goods on which your supply was temporarily exhausted?

A. We can't fill an order without merchandise.

Q. I know that, but I am asking you what percentage of orders would represent goods of which you were out of stock?

A. I don't know.

Q. To what extent up to the present time have the emergency conditions improved?

A. I can't see where they have improved.

Q. In other words, goods are just as scarce as they ever were?

A. As far as I konw.

Q. In estimating for Mr. Kurz the number of less than carload shipments that you received, did you include the truck shipments received from out of the State?

A. Yes, included everything.

Q. The reason I think you are confused on this is this: You estimated that incoming less than carload shipments would run as high as six or seven a week, whereas

on cross examination for Mr. Kurz the highest you got was two or three a week.

A. I said for one week there might be one and for another six or seven, and then some weeks I don't receive any. Isn't that right?

Q. Yes, that is the way I recall it. In estimating a percentage of goods received from out of the State, you agreed on 49 from out of the State and 51 from Jacksonville?

A. I said that was approximately. I don't know positively.

Q. I am asking you again to look at the notes Mr. Carter made with reference to August, 1945, where he said 57 per cent was received outside of the State. Do you know whether that is approximately correct for that month?

A. I don't know.

Q. Turning to the inventory for a moment, you say here that you refer to your stock record to keep up with the stock on fine paper and on coarse paper you look at the shelves?

A. Look at what is in stock.

Q. Who does that?

A. I do.

Q. By yourself?

A. Yes, sir.

Q. Does it ever happen that other employees will notice that stock is too low on any particular item and call that to your attention?

A. They might.

Q. Have they?

A. They have.

Q. Which one?

A. The shipping clerk.

Q. What about the warehouse man?

A. Very seldom.

Q. You mentioned the typing of the order to Jacksonville. Does the typist also write the letters with reference to that particular invoice and special orders?

A. She writes any mail that has to do with the order.

Q. Including any follow-up letters to the Jacksonville office?

A. We have a tracer form. We trace that occasionally.

Q. Does the stenographer do that work?

A. Yes.

Q. Does she also get up the invoices to the customers?

A. The invoices made at the time the order is written on the merchandise.

Q. Who bills the customer for the goods?

A. The salesman writes the bill.

Q. Who in the office when the goods come in and are delivered sends the bill to the customer?

A. The girl mails it where it is a direct shipment.

Q. Suppose a shipment is delivered to the warehouse?

A. It is delivered with the goods by the truck.

Q. And who writes up the invoices?

A. The salesman.

Q. The salesman, as I understand it, checks the order at the time the goods are ordered?

A. Yes.

Q. Does he prepare temporarily an invoice to be delivered later?

A. Yes.

Q. And the girl in the office, on some shipments, mails that to the customer, on shipments that go direct?

A. Yes.

Q. Does she write letters to the customers if any are necessary about that shipment?

A. If there is any letter necessary.

Q. Who types up the monthly statements?

A. They are made by hand.
Q. Who does it?
A. Mr. Fairfield.
Q. Does the stenographer mail that out?
A. Yes.
Q. Who gets the mail in the office?
A. I do.
Q. Who mails the mail in the evening?
A. I do.
Q. Who prepares the mail for mailing?
A. What portion?
Q. The letters, the invoices, the correspondence with Jacksonville?
A. I mail all the mail that goes to Jacksonville.
Q. My question was, who prepared it for mailing?
A. I do.
Q. Who types the letters?
A. The stenographer.
Q. Who does the filing in the office?
A. The stenographer is supposed to.
Q. Does she?
A. In a great deal of the cases she does.
Q. And it is her job to file the orders, is it not?
A. Well, it is not only orders; it is letters to file. If she gets behind, I help her.
Q. Is it her job to file the orders?
A. Yes.
Q. And it is her job to file the invoices?
A. She does not always do it.
Q. Is it her job?
A. Yes.
Q. And generally when she gets behind, who does it?
A. I do it.
Q. You get any bills of lading?
A. In some instances.

Q. Who files those?

A. She does.

Q. What about express receipts? Do you get any of those?

A. They are sent to Jacksonville.

Q. Do you deliver anything by express?

A. Once in a great while.

Q. Who prepares the shipping papers and any other papers necessary?

A. The express man.

Q. Who files that in the office?

A. Those particular receipts are filed by the stenographer.

Q. When goods are delivered by truck, what documents go with them? That is with incoming goods?

A. The transportation company's freight bill.

Q. Who files that?

A. Mr. Fairfield has charge of those.

Q. Who files the papers?

A. He will have to tell you.

Q. You don't know?

A. No, sir.

Q. Do you sometimes write the Jacksonville office with respect to payroll matters?

A. If it becomes necessary.

Q. Who types the letter?

A. Miss Furber.

Q. Mr. Ennis, will you state the hours that your stenographer works?

A. She comes on at 8:20 and leaves at 12 o'clock for lunch comes back at 12:30 and quits at 5:30.

Q. Does she ever work any over-time on that schedule?

A. If she does, she puts it down.

Re-Cross Examination.

By Mr. Kurz:

Q. Mr. Ennis, all your customers are in the State of Florida, are they not?

A. Yes.

Q. You make any sales outside of the State of Florida?

A. No, sir.

Re-Direct Examination.

By Mr. Downing:

Q. You ever return any merchandise to out of State points?

A. I don't recall any.

Q. Did you ever return any to Jacksonville for return to out of State points?

A. We have returned merchandise to Jacksonville.

Q. What the merchandise that you received from out of State points?

A. Yes, sir.

Q. How frequently do you do that?

A. I only recall one instance.

No further testimony by Mr. Ennis.

The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.

826 Thereupon, MARGARET R. FURBER, first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:

Q. State your name?

A. Margaret R. Furber.

Q. You are employed by the Central Paper Company in Orlando?

A. Yes.

Q. How long have you been employed by that concern?

A. May 23, 1946.

Q. What is your position with the Central Paper Company?

A. Stenographer.

Q. You have been a stenographer during your entire employment?

A. Yes.

Q. Do you work any regular schedule of hours?

A. I work from 8:20 to 5:30.

Q. And do you have any time for your lunch?

A. Yes, sir.

Q. How much?

A. I take half an hour usually.

Q. At what time?

A. Twelve.

Q. You mean from 12 to 12:30?

Q. You said usually. Are there times when you don't take half an hour?

A. I always take half an hour.

Q. You mean always not usually?

A. Yes.

Q. Do you sign in and out there on a time sheet?

A. Yes.

Q. I will show you one here which purports to be a copy, one for September 4, 1945. I will ask you to note particularly your own name. As well as you can determine, is that a correct copy of the time sheet for that day?

A. Yes.

Q. It purports to be certified at the bottom as correct by initials. What are those initials? I can't read them. Can you tell whether that is Mr. Fairchild's initials? I withdraw the question.

Mr. Downing:

I offer this for identification as plaintiff's exhibit No. 1, without objection.

Q. Did you sign one of these every day?

A. No, sir.

Q. You didn't sign one every day?

A. They told me to, but I didn't always do it.

Q. But when you don't sign them, who fills them in?

A. I fill them in later, but I don't fill them in every day. I always sign them myself.

Q. Do I understand some days you skip and then fill them in later?

A. Yes, sir.

Q. How do you remember what hours you work?

A. Because I come at 8:20 and generally work until about 5:30.

Q. Ever work after 5:30?

A. I don't exactly remember when it was. I can't remember the exact date.

Q. What you did that, did you put the correct leaving time on the sheet or put down 5:30?

A. I put down 5:30.

Q. You didn't put down the actual leaving time, is that right?

A. That is right.

Q. Why didn't you put down the time you left?

A. I don't know, sir: I just didn't.

Q. Well, Miss Furber, will you state whether you received any instructions, instructions either from Mr. Ennis or Mr. Fairfield, that you should record only the scheduled hours?

A. No, sir, I don't believe I received any instructions that I was to put down the exact hours.

Q. When you went there did you sign any contract or agreement or paper stating that you were employed by the hour?

A. I signed the regular employment papers they have. It says to do so much an hour for so many hours.

Q. How many hours did the employment paper cover, do you know?

A. I think it is about 8½ hours as well as I remember.

Q. A day?

A. I don't remember.

Q. How many hours a week did it cover, do you know?

A. I think it was 40 hours a week. So much an hour for forty hours, and so much for over that, 8 hours.

Q. Was 8 hours set up at time and a half?

A. I think so.

Q. Do you remember the rate for the first 40 hours?

A. No, sir, not exactly.

Q. Do you recall it was 45 cents an hour?

A. Yes, sir, I think it was.

Q. And you recall that the rate for the eigh[illegible]ours was time and a half or 67½?

A. Yes, sir, I think so.

Q. What is your total pay now?

A. $26.00 a week, $23.19 with deductions. Salary $26.00.

Q. Do you know on what basis that is set up?

A. No, sir.

Q. You see if you take 40 hours at 45 and 8 hours at 67½, you get a total of $23.40.

A. That is what I used to get.

Q. When you were raised to $26.00, did you sign anything any new agreement or contract?

A. No, sir, I don't think so. I signed a payroll change.

Q. Who told you you were going to be raised?

A. Mr. Ennis received instructions from Mr. McGehee to raise me.

Q. Did you ask for it?

A. No, sir.

Q. What did Mr. McGehee tell you about your raise? Did he tell you how much it would be?

A. Yes, sir.

Q. How much did he say?

A. It would be $26.00.

Q. A week?

A. Yes, sir.

Q. What did he say about an hourly rate?

A. I think he said Jackson would work that out.

Q. Did he say whether you would have to work any more hours by reason of the raise?

A. No, sir.

Q. Are you still working the same hours you did before?

A. What you mean by "before"?

Q. Before you got the raise?

A. Yes, I am working from 8:20 to 5:30.

Q. Now, Miss Furber, do you always work exactly the scheduled hours?

A. You mean every day?

Q. Yes.

A. No, sir, there have been times they let me off when I wanted to get off to go some place. I would make up the work before I went.

Q. When you got out like that did you sign up when you left or at 5:30?

A. 5:30.

Q. What is the earliest you have gotten off on an occasion like that?

A. He has left me off as much as a day and a half at at a time.

Q. Was that day and a half recorded on the daily time sheets as present?

A. No, sir.

Q. I am talking about the time you got off early in the afternoon but still signed 5:30. What is the earliest you left on the occasion when you signed off at 5:30?

A. I don't remember. I think once I left Thursday and got in Monday.

Q. What I am talking about, some time you got your work caught up and then left early in the afternoon?

A. No, sir, I don't mean that. I mean I asked permission to have off.

Q. Were you docked?

Q. You were not?

A. No, sir.

Q. On those occasions when you got off like that, did you still turn in a daily time sheet, signed with the fully scheduled hours?

A. Yes, sir.

Q. What about the day and a half you mentioned a while ago, did you turn in a time sheet for that?

A. Well, I really did make it up. I did more work that day. I didn't work anymore hours but I got through earlier and got off.

Q. And how early did you get off?

A. I am not certain; I don't remember.

Q. And you still signed out at 5:30?

A. Yes.

Q. Was that your own idea or did some one suggest it to you, Mr. Ennis or Mr. Fairfield? Did they tell you to sign out at 5:30?

A. Well, sir, I don't think anybody exactly told me to but I got the idea that was the way they wanted it done to keep the books straight.

Q. Whose job was it to see that these sheets were filled out, these daily sheets like Exhibit 1, Mr. Ennis or Mr. Fairfield?

A. Mr. Fairfield.

Q. Did he know of the occasions when you got off early?

A. Yes, sir.

Q. Did Mr. Ennis know of them?

A. Yes, sir.

Q. Will you state, Miss Furber, what work you do for the Paper Company?

A. You mean specific?

Q. Yes, what is your job?

A. Type, file, answer the phone, make out invoices sometimes.

Q. You ever take any orders on the telephone?

A. Yes, and wait on customers.

Q. Any of those orders you have of goods that have to be specially printed with the customers' label?

A. No, sir.

Q. What about the invoices that you mentioned? Did any of those relate to goods that had been ordered for the customer specially printed?

A. Yes.

Q. How often did you make up invoices?

A. Every day I make up some.

Q. What becomes of those?

A. Well, Mr. Ennis looks over it and we send them out.

Q. Where are they sent to?
A. Sent to the customer.
Q. You do some of that every day?
A. No, sir, not every day, not that.
Q. Do you handle any of the records that have to do with the goods that are going into the warehouse?
A. I handle invoices that come in.
Q. What do you do with those invoices?
A. I match them up with the orders.
Q. What do you do with them?
A. I give them to Mr. Ennis, after I stamped them.
Q. Do you do the filing?
A. Yes, sir.
Q. Do you file the invoices?
A. Yes, sir.
Q. Do you file the letters?
A. Yes, sir.
Q. You file any bills of lading and express receipts?
A. Yes, sir.
Q. What else do you file?
A. Salesmen's collection reports.
Q. You file or otherwise handle freight bills?
A. No, sir.
Q. Do you not type up or prepare by hand a monthly statement to customers?
A. No, sir.
Q. Who does get out the monthly statements?
A. Mr. Fairfield.
Q. Who writes them up?
A. Mr. Fairfield.
Q. You ever assist him?
A. No, sir, I put them in an envelope is all I do.
Q. You put them into envelopes?
A. Yes, sir.
Q. Do you get bonuses from the company?
A. I am going to, I think.

Q. Why do you think so?

A. Well, sir, I think that is a ruling of the company, to get a bonus after I have been there for a year.

Q. Anyone tell you that?

A. Yes, sir.

Q. Who told you that?

A. Mr. Ennis and Fairfield have both told me.

Q. Have they told you how much they would get?

A. No, sir, not exactly.

Q. What did they tell you?

A. They told me I would get one after I had been there a year.

Q. How much?

A. 15 percent of the money I had gotten in salary, so much a month.

Q. So much each month?

A. Yes, sir.

Q. Were you told whether that was a raise or not? Were you told whether that would be a raise?

A. I don't know what they classified it as.

Q. Have you been told whether it will affect the hourly rate of pay set up on a cost basis?

A. I don't know nothing about that.

Q. Did anyone ever tell you that if you don't work the full number of hours required by the company schedule you are building up a debt to the company?

A. No, sir.

Cross Examination.

By Mr. Kurtz:

Q. Miss Furber, you said that sometime you work later than 5:30. I believe you said that was last year. How often did that happen?

A. I didn't keep track of it.

Q. Did you work more than one time after 5:30?

A. Yes, sir, it was just voluntary.

Q. How often did you do that?

A. I know more than once or twice.

Q. Was it five times?

A. It might have been.

Q. How many times a week would that be?

A. I can't truthfully tell you because I didn't count them.

Q. Well, did it happen every week?

A. No, sir, I don't think it happened every week.

Q. Did it happen once a month?

A. Yes, sir.

Q. Once every month since you worked there?

A. Not every month since I worked there.

Q. How late would you work then?

A. Sometimes I would work till quarter to six and sometimes I have worked until six and sometimes worked a little after that, not much after six.

Q. Can you tell me whether that happened every month or every week or how often a month?

A. No, sir.

Q. And you still signed off for 5:30 when you did that?

A. Yes, sir.

Q. Did anybody tell you to do that?

A. They didn't specifically tell me to. I understood that was the way they wanted me to sign it like that every time.

Q. How did you get that understanding?

A. I think they mentioned they wanted it the same way.

Mr. Downing:

Q. I understood you to say so as to keep the books straight?

A. I said so they could keep the books straight.

Mr. Kurz:

Q. When you say that, how do you mean?

A. I am not certain whether they did or not, I think they did, as well as I remember.

Q. I believe that you said that sometime you left before 5:30 in the afternoon? How often did that happen?

A. It happened about four or five times. Was on special occasions when I asked to get off.

Q. Four or five times since you commenced working for the company?

A. Yes.

Q. When would you get off and how early would you get off?

A. I think once I got off about an hour before 5:30, an hour or a little over, and once I got off a day and a half and once I got off, I think, on Saturday.

Q. This time you were off for a day and a half, was that the only time, was that the only time you were off for more than half an hour or so?

A. No, sir. I told you that time I got off on Saturday, that would be from 8:20 to one.

Q. You mean you didn't work Saturday at all?

A. No, sir. All the times I got off was at least an hour.

Q. At the time you started working for the company who told you that? About filling it out?

A. Mr. Fairfield.

Q. Just what did he tell you about keeping that record?

A. Told me to fill it out.

Q. How much did he say—when you came to work and when you went to lunch?

A. I guess that is what he meant.

Q. Can you tell me just what he said?

A. No, sir, not exactly.

Q. Well, he had some conversation with you about keeping a record of his hours?

A. Yes.

Q. Did he show you this time sheet and tell you how to fill it in when you came to work in the morning?

A. Yes, sir, he told me to fill it in.

Q. Did he tell you to fill it in when you left for lunch?

A. I think he wanted me to but I don't know that he mentioned it just that way or not.

Q. He showed you the sheet?

A. Yes.

Q. Did you read to see what was on that, this mimeographed form?

A. Yes, sir.

Q. How often do you make out invoices for printed goods?

A. For printed goods?

Q. Goods that have the customer's name printed on?

A. Well, when I filed direct shipments in it.

Q. Well, how often does that happen?

A. There are not many invoices of that kind.

Q. It does not happen every day?

A. No, sir.

Re-Direct Examination.

By Mr. Downing:

Q. Did you get off the 4th of July, last year?

A. Yes, sir.

Q. Labor day?

A. I think so. I am not certain.

Q. What about VJ day?

A. Yes, sir.

Q. Get off one day sick?

A. Yes, sir.

Q. Get off Thanksgiving?

A. Yes, sir.
Q. Christmas?
A. Yes, sir.
Q. How much time Christmas?
A. Christmas day and part of the day before Christmas. I think we worked until noon the day before Christmas or stayed around there.
Q. What about New Year's?
A. Got off that day.
Q. Have you had any holidays since New Year's?
A. I think we got off in February once. The last time I got off, I think I asked them to get off.
Q. You didn't have either Memorial Day, did you?
A. No, sir.
Q. Did you ever get to work before 8:20?
A. I am not certain. I might have five minutes or so.
Q. When you do, you still sign in at 8:20, do you?
A. Yes, sir.
Q. Do you know who posts this pink sheet? The total hours?
A. The total daily hours?
Q. Yes. Do you do it?
A. No, sir.
Q. In reference to the invoices covering goods which are specially printed or which have customer's labels, do you get some of those every week?
A. Yes, sir, I think so.

Re-Cross Examination.

By Mr. Kurz:
Q. Did you make any special note of the goods with the customer's name printed on them?
A. What you mean by the customer's name printed on them?

Q. What makes you know that you do that every week?

A. There are usually some of them every week and I know that is part of my work.

Q. Last week, what invoices did you have, merchandise with the customer's name printed on it?

A. I don't remember.

Q. What about the week before?

A. I don't remember that far back.

Q. Mr. Ennis testified we didn't have them every week. Was he mistaken?

A. No, sir. I am talking about direct shipments. Every direct shipment is not an invoice with special printing on it.

Q. Where do the direct shipments come from?

A. From Jacksonville. When I said that a while ago, I had that in mind. I was not thinking about specifically printed orders, as far as printed orders are concerned. We would not have them every week, but direct shipments we would.

Q. Did they come from Jacksonville?

A. All direct shipments.

The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.

839 Thereupon, G. S. FAIRFIELD, first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:

Q. State your name?

A. G. S. Fairfield.

Q. Are you employed by the Central Paper Company in Orlando?

A. Yes, sir.

Q. How long have you been employed by that Company?

A. Since January 1st, 1943.

Q. In what capacity?

A. As cashier, and office manager.

Q. Were you there last September when Mr. Charles L. Carter, Wage and Hour Inspector, made an inspection of this company?

A. I was.

Q. Did Mr. Carter get from you certain figures relative to the amount of business done in 1945?

A. No, sir, we referred him to Jacksonville.

Q. I show you a memorandum he prepared showing over-all purchase of goods. Will you look at that and examine it and you will notice he indicates the total purchases at $17,925. Is that approximately correct to the best of your recollection?

A. I would not have any way of knowing. The records should be in Jacksonville on purchases.

Q. Can you state, Mr. Fairfield, what proportion of the goods and merchandise distributed by you comes from towns outside the State?

A. No, sir, we don't keep any such records here.

Q. From you familiarity with the business, would you be able to state an estimate?

A. No, sir, I would not even want to make an estimate.

Q. Now, will you state the exact nature of your duties as cashier?

A. Well, I handle all the bookkeeping right at the present and I am waiting on a few of the customers. I answer the telephone and take orders, handle the cash. I think that about covers it.

Q. How long have you done all the bookkeeping?

A. Well, we had a young lady up until last December, I believe it was just before Christmas. She quit and then we got a shipping clerk and now I am doing the bookkeeping.

Q. When the girl was there, how much of the bookkeeping did she do?

A. She posted all the outgoing merchandise and cash.

Q. When she was there, how much of the bookkeeping did you do?

A. I handled the cash and made up the monthly reports that went to Jacksonville.

Q. Who took care of posting the invoices and keeping the accounts of the customers?

A. The young lady did.

Q. Who took care of the time records and payroll of the workers?

A. They are made up in Jacksonville, the payroll and sent down here. I distribute it.

Q. You keep some time records in your office?

A. The drivers and the young lady, they signed it.

Q. Who was it turned over to?

A. It was sent into Jacksonville.

Q. Turned over to you and you sent it to Jacksonville?

A. Yes.

Q. Those signatures were like those on this paper, marked plaintiff's Exhibit No. 1 for identification, were they not?

A. Yes, sir.

Q. Then I will ask you who was it that totaled the hours on the daily time sheet and posted them to the pink sheet marked "Weekly Summary Time Sheet."

A. I did.

Mr. Downing:

I ask this be marked for identification as Exhibit No. 2.

Q. While we are on the subject of the time record, as I understand it, you totaled the whole hours and posted it to the weekly summary sheet No. 2?

A. That is right.

Q. And then forward this to the Jacksonville office?

A. Yes.

Q. So it was your duty in the office to handle such time records as were kept?

A. That is right.

Q. In connection with the daily sheet No. 1 for identification, did you give any employees instructions about what hours they were to sign in and out on that sheet?

A. Only they were supposed to sign or mark the time when they came in and went out, and if they did it otherwise, it was their own fault.

Q. Do you know of any case where the work time is not recorded here?

A. Well, I believe the young lady stenographer worked two or three times over-time, but the she was off at least three or four days; let her off.

Q. In the same week?

A. No, sir.

Q. In different weeks?

A. Yes, sir.

Q. What about the truck drivers? Don't they sometimes work hours they don't put down here?

A. Not to my knowledge they don't.

Q. You don't know as a matter of fact the truck drivers on a long haul leave before eight o'clock in the morning?

A. No, sir.

Q. When do you get there?

A. 8 o'clock.

Q. State what your regular schedule of hours is?

A. Go to work at 8 and get off at six except on Saturday, we close at one.

Q. How much lunch hour do you take?

A. One hour.

Q. Do you yourself sign these daily time sheets?

A. No, sir.

Q. Have you ever?

A. No, sir.

Q. Have you ever worked any hours outside of schedule which you have just mentioned?

A. Well, I believe about two years ago taking annual stock we had to work one Saturday afternoon.

Q. Was that the only occasion when your working hours were not confined to the eight to six schedule and eight to one schedule?

A. That is right.

Q. You get any extra pay for that Saturday afternoon?

A. No, sir.

Q. Since you went there have you signed any contract or memorandum stating the terms of your employment?

A. I don't believe I get what you mean.

Q. Have you signed any contract stating that you are paid by the hour or any such basis as that?

A. No, sir, I have signed a weekly salary, I believe, to start off. Of course it has increased since I have been there.

Q. Was there writing saying you were employed by the week?

A. I would have to look it up. I would not say.

Q. Did you keep a copy?

A. No, sir.

Q. At that time or any time since that, had there been any understanding that you were employed on an hourly basis?

A. No, sir, weekly.

Q. On each occasion when you were given a raise, was anything said about an hourly rate of pay?

A. No, sir.

Q. Was anything said as to the number of hours you ought to work a week?

A. Not since I have been there, no, sir.

Q. When you first went there, was anything said about how many hours you were to work?

A. The schedule they all worked on there, from eight to six.

Q. What was the lady's name that worked in the office up to January?

A. Mrs. Butler.

Q. Was that Mrs. Alice Brower Butler?

A. Yes.

Q. Is there another employee in the office that does stenographic work?

A. Nobody other than the young lady up here.

Q. That is Miss Furber?

A. Yes.

Q. While Mrs. Butler was there, how much of your time did you devote to bookkeeping duties?

A. I really don't know sir.

Q. Let's start now and work backwards: How much time do you devote to bookkeeping now?

A. Well, it is nine hours a day except on Saturday.

Q. In other words your whole time now devoted to bookkeeping?

A. It is.

Q. And that has been true since January?

A. Yes.

Q. Did Mrs. Butler devote her entire time to bookkeeping?

A. Well, she of course answered the telephone and took orders. That is when the phone rang, she wrote up the invoices.

Q. Who is that work done by now, Miss Furber?

A. She does a portion of it, and I did, and the manager

Q. Mr. Ennis?

A. Yes.

Q. Other than taking telephone orders and writing invoices was Mrs. Butler's entire time devoted to bookkeeping duties?

A. That is right.

Q. And in addition to that, you did some bookkeeping?

A. Yes, sir, I had the salesmen's collections to write up so she could post the cash account.

Q. What other bookkeeping work did you do?

A. I made the monthly records.

Q. What is that?

A. Well, it is the salesmen's bills and the ledger work, that is what it is.

Q. During the time that Mrs. Butler was there, did you have any bookkeeping duties that you performed every day?

A. Every day.

Q. Yes.

A. Well, I would consider the cash bookkeeping.

Q. You were still cashier at that time?

A. Yes.

Q. And it was still a part of your job to handle all the money?

A. Yes.

Q. And make the bank deposits?

A. The banking was done in Jacksonville.

Q. Did you send the money to Jacksonville?

A. The cashier's checks and customers' checks.

Q. Did you have any bank account here?

A. No, sir.

Q. What did you do with the cash money?

A. Turned it in with the cashier's check.

Q. Which day?

A. About every two or three days.

Q. I understand you always handle the time records?

A. Yes.

Q. You handled the petty cash?

A. That is right.

Q. During the time she was there, did you post the debits and credits on accounts receivable?

A. Not unless she was ill or on vacation.

Q. What about the debits and credits with the home office?

A. Debits and credits?

Q. Did you keep any accounts with the home office?

A. I don't understand what you mean.

Q. Well, I assume that your branch had an account of some kind with the Jacksonville Paper Co. Is that right or not?

A. We have merchandise that we ship into their store that is posted on the cash book as a debit or credit which is posted to the ledger at the end of the month.

Q. Do you handle that?

A. Yes.

Q. Do you make out the statement for the customers?

A. I do now.

Q. Did you then?

A. I helped the young lady when she needed it.

Q. Did you help her post invoices?

A. No, except when she was on her vacation.

Q. During the time she was there, what duties did you perform out in the warehouse, if any?

A. Well, I received the merchandise and checked the merchandise out on trucks.

Q. By receiving merchandise, you refer to that coming in?

A. Yes.

Q. How did you receive it?

A. We have a receiving book.

Q. Did you enter it in the receiving book?

A. I did.

Q. Now, during that period, can you state what proportion of your time you spent in the warehouse duties?

A. No, I really can't because we were in and out. I never kept a record of it.

Q. Did you have any duties not already mentioned other than your bookkeeper duties and your cashier's duties and your warehouse duties?

A. None that I can think of.

Q. Did you ever hire or fire anybody?

A. Yes, I hired a young lady in bookkeeping there and she was not satisactory and I had to let her go.

Q. Did you hire her or Mr. Ennis hire her?

A. No, I hired her.

Q. When was that?

A. Just before I got Mrs. Butler, I think it was.

Q. When did Mrs. Butler come there?

A. I really don't remember. I would have to check the records.

Q. Did you hire or fire any of the warehouse employees or truck drivers?

A. No, sir, that was Mr. Ennis' duties.

Q. Was it also a part of his job to supervise the warehouse?

A. Yes.

Q. How much time did you expend yourself in supervision of the warehouse?

A. Well, I really can't say.

Q. Well, you just stated it was Mr. Ennis' job to supervise the warehouse. Did you have any supervision of the warehouse?

A. Nothing except to see that the trucks went out and the merchandise brought in.

Q. Did you do that incidental to your receiving and checking out goods?

A. As I explained before, I did all the checking in and checking out of merchandise.

Q. And did your supervisory work extend to checking in and checking out?

A. Yes, to see that everything was done right that was one of my duties.

Q. To what extent did you supervise the stenographer in the office, if any?

A. Nothing other than taking a few letters.

Q. You mean you just dictated to her?

A. That is right.

Q. Before January of this year, how much of the time was Mr. Ennis away from the warehouse?

A. I would not have any idea of computing that, because he didn't keep any time he was away and I didn't.

Q. Put it this way, were you in charge of the warehouse and office when he was gone?

A. That is right.

Q. How much of the time would you have charge of it yourself?

A. I can't tell you. I didn't keep a record.

Q. Would you be able to state any estimate?

A. I would not, no, sir, because I would not know.

Q. Well, had there been any change in the management since January 1st of this year when Mrs. Butler left here?

A. That is right we have a shipping clerk now.

Q. You didn't go out there at all?

A. Except when they are all at lunch. When anybody came in, naturally, I wait on them.

Q. Do you assist in any supervisory duties in the warehouse?

A. None that I know of.

Q. And in the office the only supervision that you have is dictating the letters to the stenographer?

A. Yes, and answering the correspondence.

Q. When Mr. Carter was down here last September, Mr. Fairfield, he made a summary of some of the invoices during the period of July, August and so forth, of last year, particularly as to August which relates to goods which were specially printed with the customer's label. Do you remember some of the companies for whom such goods were ordered?

A. No, because that was not a part of my duties.

Q. Well, as I understand it, you as the bookkeeper do all of the bookkeeping, do you not?

A. That is right.

Q. You handle all the invoices, don't you?

A. Well, yes, I handle them and post them to the ledger.

Q. Is it not true that the invoices themselves show on their face that the goods in many cases are to be printed with the customer's label?

A. Yes.

Q. I am asking you specifically with reference to Baltimore Sales Book Company, do you or not frequently receive orders for printing?

A. Yes.

Q. What about the San Juan Pharmacy?

A. Yes.

Q. How often did you furnish them with printed merchandise?

A. I don't recall.

Q. How about the South Parramore Grocery, was there anything special printed for them?

A. No, sir, I can't tell how about that because I don't recall the particular customer.

Q. Dixon-Ives; were there printed clothes boxes ordered for that company?

A. That is right.

Q. How often have you made such orders for them?

A. I can not answer that because they never order until they run out.

Q. How often do they run out?

A. I don't know.

Q. How often do you get orders?

A. I don't know.

Q. You get invoices?

A. Oh, yes, but I can't give you any idea as to how many times a year they order them.

Q. Do you recall pie plates especially printed for them?

A. No, sir.

Q. What about other items especially printed for them?

A. No, sir.

Q. What about gum tape for the Eola Coffee Company?

A. Yes, sir.

Q. How often did they get these?

A. I believe that is the first order that I recall right now.

Q. You had some since that time?

A. No, sir.

Q. Do you recall a special order, especially printed cups or tops?

A. Yes, sir.

Q. For whom did you order those?

A. One was Snyder Creamery at Eustis.

Q. How often did you furnish those to Snyder Creamery?

A. We have a contract with them and they keep getting them until the contract runs out and then it is renewed.

Q. Do you have contracts or agreements with any other customers, standing order contracts?

A. I can't recall because that is not in my end of the business. Mr. Ennis handles that.

Q. Did you ever hear in connection with this special order business about contract number 68?

A. No, sir.

Q. Customers' label order from the Harvey Paper Products Company, four hundred thousand cups?

A. No, sir.

Q. You are not familiar with anything about the Harvey Paper Products Company?

A. No, sir.

Q. Now with reference to this Snyder contract, what period of time did that contract cover?

A. I really don't know, sir, because I don't handle that end of it.

Q. How long has it been in effect.

A. Since I have been there, I don't know how long ago.

Q. That has been over three years?

A. Yes.

Q. Is it renewed from time to time?

A. Yes, I believe it is.

Q. When was the last renewal?

A. That I don't know.

Q. What period is covered by each renewal?

A. That I don't know.

Q. How often have you become aware of renewal?

A. Well, just recently we had one.

Q. Naturally you have been aware since you have been there that there was a contract?

A. Yes, but I don't know how long it covers.

Q. What does it cover?

A. Printed lids and cups.

Q. For what kind of box?

A. Ice-cream.

Q. Do you recall an order for printed gum tape for Thompson's Grocery?

A. As I told you I don't order them, but they did have such an order.

Q. How many, do you know?

A. No, I really don't.

Q. Has there been only one of them?

A. Just one, sir, that I can recall.

Q. Do you get any paper spoons or forks which are specially printed for the customer?

A. I can't recall.

Q. Do you get any laundry books which are specially printed and dry-cleaner books?

A. We have had some dry-cleaning books.

Q. For what customer?

A. I can't recall.

Q. From whom did you order them?

A. From the seven industries.

Q. Jacksonville?

A. Yes.

Q. Are they all ordered from the seven industries at Jacksonville?

A. Yes.

Q. How often do you order these from the Baltimore Sales Book Company?

A. I can't tell you.

Q. For them while you were working in the warehouse?

A. I would not have the slightest idea over a period of a year. It would be very hard to say not having any records to go on.

Q. You have the invoices, do you not, for the office on items purchased from the Baltimore Sales Book Company?

A. No, sir.

Q. Who does?

A. The young lady.
Q. What about the direct shipments?
A. She handles this also.
Q. Are you familiar at all with the volume of business done with the Baltimore Sales Book Company?
A. No, sir.
Q. You got the goods?
A. Yes.
Q. You don't know how much?
A. No, sir, we don't keep records of that, I don't.
Q. Although you have been there two years and handled that stuff regularly during that time you are unable to state how much was received?

By Mr. Kurz:

Objected to on the ground that it states a conclusion of the Attorney that these goods are renewed regularly. He is arguing with the witness who has already said he can not answer the question.

By Mr. Downing:

Q. Do you recall an order for sales books by J. S. Geddick of Oakland, in September of last year?
A. I don't remember.
Q. Did your sales books all come from the Baltimore Sales Book Company, are they all printed by the Baltimore Sales Book Company?
A. As well as I remember.
Q. Do you recall an order for printed sales books for Brown & Son at Wildwood?
A. That I don't recall.
Q. Cups printed for the Polar Water Company?
A. No, sir, they were not printed.
Q. What were they?
A. Plain.

Q. Do you recall any sales books printed for Cash Service Company, in Apopka?

A. No, sir.

Q. Are you familiar with the business done with the "AA"?

A. No, sir.

A. No, sir.

Q. You don't know whether you supplied them a line of goods not ordinarily printed to other customers?

A. I can't say, Sir. I didn't handle that end of it.

Q. I think you handled the records on it?

A. Yes, that is to post them to the ledger.

Q. Can you give us a idea of what the monthly account runs with "AA"?

A. We only handled about five hundred accounts and it would be hard to remember that account.

Q. It depends on how important it is?

A. One account is as important as another.

Q. It is all the same to you?

A. Not exactly.

Q. In size you don't distinguish them?

A. Well, no.

Q. Do you recall an item, of special paper ordered for Barnetts ordered from Patterson's Parchment Paper Company?

A. Printed?

Q. Yes.

A. I don't recall any printed. It was parchment paper for wrapping ferns.

Q. Is that the kind of paper you regularly carry in stock?

A. Yes, I know we have ordered some in form except the size.

Q. You cut it here?

A. No, sir, at the mill.

Q. How often do they order such goods?

A. I think about once a year.

Q. Are you familiar in a general way with the number of items or goods that the company carries regularly in stock?

A. No, sir, they are so numerous I really can't say.

Q. In addition to this stock regularly carried in stock do you supply some of your customers an order of the goods that you don't regularly stock?

A. Well, I really don't know how to answer that because we have always anything in the paper line.

Q. If I understand it, if you have a customer that wants something in the paper line that you don't regularly stock you will order it for him?

A. Yes, if we can get it.

Q. Well, conditions, of course, are different at different times but it is not the practice to order for your customers what they want whether you carried it in stock or not?

A. We try to get what they want and sometimes we have to substitute.

Q. How often is it that some of your customers will request an item that you don't stock?

A. Well, I can't say because the salesman takes the orders and it's on items such as we can get. I don't go into that end of it.

Q. You get a bonus, do you not, Mr. Fairfield?

A. Yes.

Q. Are you aware of the basis on which it is paid?

A. Yes.

Q. What is it?

A. Well, if you are there a year, I believe it is, 15% of your yearly salary.

Q. Paid how frequently?

A. On a monthly basis.

Q. 15% of your previous year's salary is divided into monthly installments and paid to you each month after you have been there a year?

A. Yes.

Q. Suppose an employee quits in the middle of the month, does he get any portion of the bonus?

A. Our year starts as of June and the check for June comes in the first of the month for June and the same way for the following month, the first of the month.

Q. Does the June check cover May?

A. No, sir.

Q. The June check covers June?

A. Yes.

By Mr. Downing:

That is all.

Cross Examination.

By Mr. Kurz:

Q. Mr. Fairfield, you said in answer to Mr. Downing's question that you devoted your whole time to bookkeeping. Do I understand from that that you mean all of your time was spent on the books?

A. Well, I would assume that would be my duties, yes.

Q. Do you do anything else except make entries in the books?

A. As I said I answer the telephone and make out a few orders.

Q. Who handles the petty cash?

A. I do.

Q. Up to ten dollars?

A. Up to ten dollars balance for small amounts.

Q. Who passes on credits?

A. I do.

Q. Mr. Downing in formulating his questions about invoices for printed goods asked you whether you had many cases of printed goods and you said yes. What did you mean by many cases or orders for printed goods? How many would come in the course of a week?

A. It might mean once a month.

Q. Mr. Downing also asked the question about orders from the Balitmore Sales Book Company, how often did you order from them?

A. I can't say because it is handled by Mr. Ennis and the stenographer.

Q. You have nothing to do about making the orders?

A. No, sir.

Q. Do you know whether the Baltimore Sales Book Company also makes unprinted sales books?

A. They do.

Q. Would you know in making an entry in your book whether it covered printed or unprinted merchandise?

A. No, sir, unless I looked at the invoices or it was specially pointed out to me.

Q. Do you carry unprinted sales books in stock?

A. Yes.

Q. You said something about a contract with the Snyder Creamery?

A. Yes.

Q. Do you know what that contract covers?

A. No, sir, I really don't, other than I know it is for lids and caps for cups. More than that I can not tell you.

Q. Do you know how often orders are received from them?

A. No, sir, they ship direct, I believe.

Q. Do you handle these orders?

A. Do I?

Q. Yes.

A. No, sir.

Q. Do you know whether the cups that you supplied to Snyder are printed?

A. No, I don't. I know the lids are. I just presume that the cups would be also.

Q. I believe you said you don't know how often you got an order from Mr. Snyder?

A. No, sir.

Q. Who employed Miss Furber?

A. Mr. Ennis hired the young lady.

Q. Did you have any conversation with her about keeping these time records?

A. No, sir, not to my knowledge.

Q. Do you know how often Miss Furber worked later than five thirty?

A. No, sir, I really don't. I can not give you any definite answer on that.

By Mr. Kurz:

That is all.

By Mr. Downing:

That is all.

Counsel and witness waived the reading and signing of the deposition by the witness.

859 Thereupon, HERMAN RICHARDSON, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:

Q. State your name?

A. Herman Richardson.

Q. Did you ever work for the Central Paper Company, Herman?

A. Yes, sir.

Q. How long did you work for them?

A. A little over two and one half years.

Q. When did you leave there?

A. In October, 1945.

Q. Were you there last October when Mr. Carter the wage-hour inspector came around?

A. Yes.

Q. Did he talk to you then?

A. Yes, sir.

Q. Herman, I want to question you about some things he did, in other words about your job and how much time you put in and what pay you got.

A. Yes, sir.

Q. What was your job when you first went there?

A. Truck driver.

Q. Did you stay a truck driver the whole time?

A. Yes, sir.

Q. Until you left?

A. Yes, sir.

Q. Did you spend all your time driving a truck?

A. No, sir.

Q. What else did you do?

A. I worked in the warehouse, unloading cars.

Q. You mean in the warehouse?

A. Yes.

Q. How often did you help unload the cars?

A. Got in a call for about two cars a week.

Q. Did you get a car every week?

A. Not every week, no, sir.

Q. I want to refresh your recollection, you mean two cars a week or a month?

A. I mean a month.

Q. Which do you mean now, I want to get it straight?

A. Two a month.

Q. So a car didn't come in every week necessarily?

A. No, sir.

Q. What is the largest number of cars that came in, in a month, do you remember?

A. That would be three.

Q. When you think of these cars coming in you mean they are all part carloads?

A. Some full and some part.

Q. How often did less than full carloads come in?

A. About once a month.

Q. Suppose you tell us now what your regular schedule of hours was working there?

A. Eight o'clock in the morning until twelve and an hour for noon and get off at six.

Q. Did you work that schedule on Saturday?

A. No, sir, went on at eight to one.

Q. Take a typical day and give us what you did in the morning?

A. Sweep up the office first thing and then get up orders to be delivered.

Q. You first worked in the warehouse?

A. In the office first sweeping and then in the warehouse.

Q. And then you got up orders?

A. Yes.

Q. What next?

A. Load the trucks.

Q. What next?

A. Deliver.

Q. On the ordinary average day what time did you go out on the truck?

A. We worked the City around ten-thirty.

Q. From eight to ten-thirty you spent in and around the office and the warehouse?

A. Cleaning the office and loading the trucks.

Q. What time generally did you get back from making deliveries?

A. Three-thirty to four o'clock.

Q. What did you do after that?

A. Get on the car and unload it in the warehouse.

Q. About what time did you average unloading the cars?

A. Well, we get in the car in the afternoon and finish the next morning, I can't tell you how long.

Q. How many times a week or month did you do that?

A. That happened about three times a month.

Q. Do you know where any of those cars came from?

A. Louisville, Kentucky, is one place.

Q. Now, as a truck driver,—did you have any regular days on those?

A. No, sir, when the big truck would be overloaded they would send the little truck behind it to trail it and that has been mostly on Thursday and Friday.

Q. Did you drive this little truck?

A. Yes.

Q. Usually on Thursdays and Fridays?

A. Yes, sir.

Q. When you were trailing the big truck generally when do you get back in the afternoon?

A. Three-thirty or four.

Q. Then what do you do?

A. Load for the next day.

Q. Did you generally load up the trucks in the morning when you get there at eight o'clock or in the afternoon?

A. We load the trucks that evening, when we leave the town the next day so as to get out early the next morning.

Q. Now you have indicated that your schedule of hours is eight in the morning until six at night and an hour for lunch?

A. Yes.

Q. Did you ever work at any time not within that regular schedule?

A. Yes.

Q. Did you truck-drivers and ware-housemen write down your in and out time on a sheet like this?

A. Yes.

Q. When you worked that extra time did you put it down on there, your regular time or extra time?

A. One time I put it on extra time and it was erased off.

Q. Do you know who did it?

A. Mr. Ennis told me not to put it on there any more, just put it on there like it had been done before.

Q. Why did he do that?

A. I can't tell you.

Q. What time did you put it on there?

A. I put it on there the next morning.

Q. Was there more than one, or just you?

A. When I was helping them unload.

Q. Was there anybody with you on that occasion?

A. Yes, Walker and I.

Q. Do you know whether he signed in at seven-thirty at night?

A. I don't know whether he did or not.

Q. After that occasion did you work overtime after six o'clock at night?

A. Yes, sir.

Q. Did you ever put it down there?

A. After he told me not to do so I didn't do it.

Q. On these country runs did you or not ever leave before eight o'clock in the morning?

A. Yes, sir.

Q. What time did you leave on these long runs?
A. Seven-thirty.
Q. Always at seven-thirty?
A. When going out of town, yes.
Q. How often did you do that?
A. It would happen every Thursday and Friday. That is the only time I drive.
Q. Why did you put your time on this daily time sheet?
A. I was told.
Q. By Mr. Ennis?
A. Yes.
Q. Who did you go out on these country runs with?
A. Walker Williams, he had the big truck and I had the little one.
Q. Did his truck leave at the same time yours did?
A. Yes.
Q. Did you two sign these two sheets together at the same time?
A. I don't know whether we signed them together or not.
Q. You don't know what time he signed his?
A. No, sir, I do not.
Q. Herman, when you were out on your truck making deliveries how much time did you take for your lunch?
A. Thirty minutes.
Q. How do you know?
A. When we would get out at the store to find out what time it was and stopped in front of the store and carried the milk bottles back to them after thirty minutes.
Q. When you signed this daily time sheet how much time do you show for lunch?
A. After he showed me not to sign these sheets any more like that I didn't sign them.

Q. How much time did you sign for lunch?

A. Just like for the same every day.

Q. An hour from twelve to one?

A. Yes.

Q. When you would make deliveries in town, where did you get lunch?

A. At home.

Q. How much time did you take for lunch at home?

A. One hour.

Q. Do I understand it was only when you were on these long runs that you had only half an hour for lunch?

A. When you are on a run you hardly have thirty minutes to eat.

Q. In the beginning before you were called down about signing it, did you ever show a thirty minutes lunch period on here?

A. No, sir.

Q. Did Mr. Ennis or Mr. Fairfield know you were only taking thirty minutes for lunch when you were out on the road?

A. No, sir.

Q. Did you ever tell them?

A. No, sir, the only time I told them when I came in and gave in my time that I make.

Q. What did you tell them?

A. That I made an hour or half hour every time and they let us have the next day to make it up.

Q. Let's take one of these occasions when you worked until six o'clock when they let you have the next day?

A. They would let me have a couple of days after that—they would let me have a chance to get off an hour sooner to five-thirty.

Q. Was your six-thirty time put on these sheets?

A. No, sir.

Q. Let's go to the day when you put down five-thirty. To make that day what time did you put on here for quitting?

A. Six o'clock.

Q. When you had short lunch periods did they make that up to you in the same way?

A. No, sir.

Q. I will ask you specifically about the time in the morning when you left at seven-thirty on these long runs, did they give you time off to make up for that?

A. They didn't give me time off for getting away but when I came back they gave me time off for that.

Q. If you were late at night, they gave you time off and if you came to work early they didn't give you time off on that, is that correct?

A. Yes, sir.

Q. If you worked beyond six o'clock and told them about it when would they give you time off?

A. It might be the next day or the next two or three days.

Q. But for your short lunch periods and time when you went to work early in the morning they did not give any allowance?

A. No, sir.

Q. And you always showed your time from eight to six and the hour off for lunch, after Mr. Ennis spoke to you, is that right?

A. Yes.

Cross Examination.

By Mr. Kurz:

Q. Herman, how often did you go out early in the morning when you worked for the company?

A. Thursday and Friday.

Q. Every week?

A. Not every week.

Q. How often would it happen in a month, we will say?

A. Something like twice a month.

Q. How often would you work after six o'clock at night in the course of a month?

A. When I am out of town?

Q. Anytime.

A. Sometimes when we were out of town we got in around seven o'clock.

Q. And that would be once or twice a month?

A. Something like that.

Q. You left in October of last year, didn't you?

A. Yes.

Q. Did you always put down eight to twelve, and eight to one, with one hour for lunch, did you do that every day until Saturday up until you quit?

A. No, sir, I put down seven-thirty one night and he erased it and showed me how he wanted it fixed.

Q. After that you always put it down at the same hour, is that right?

A. Yes, sir.

Q. You said when you unloaded these cars they came from St. Louis, Kentucky, how do you know that?

A. I know it by what it had on the paper.

Q. But you didn't know where it actually came from?

A. No, sir.

Q. You didn't know where the paper actually came from?

A. No, sir.

Q. It could have come from Jacksonville?

A. I don't know, Sir. It said Louisville, Kentucky.

Q. That is when you have a whole car?

A. Yes.

Q. Would you get a whole car twice a month?

A. Not every month.

Q. How often would you get a whole car of merchandise in the course of a year?

A. It might be as much, I would say about twice a month.

Q. A full car of freight twice a month?

A. Yes.

Q. How often would you get a part car?

A. About once a month.

Q. In other words you unloaded from one to two cars a month?

A. Yes.

Q. Some of them were part cars?

A. Yes. One of them would be a part car that we would unload and the other part would go to Lakeland or somewhere.

Q. How long did it take you to unload a part car?

A. Just about a day.

Q. Did it take that long to get it out of the car and into the warehouse?

A. Yes, and placed.

Q. Do you know where these cars come from?

A. No, sir.

Q. When you were unloading cars did you do anything else except that, after you had unloaded it did you do any other work?

A. Make the city delivery and then come back and unload it.

Q. You didn't spend your whole day at the car?

A. No, sir, once it was on a Wednesday when the store was closed.

Q. Other times you spent part of your time making the deliveries.

A. Yes.

Q. How long would it actually take unloading the particular car or part cars, how many hours would you spend unloading the part cars?

A. That would be hard for me to tell you that because when I go out and come in they have some of it out, just about all out when I come back.

Q. When you make these deliveries, when you had more than one truck, you drove the little truck?

A. Yes.

Q. Where did you go?

A. We would go as far as Clarmont, Winter Garden, Oakland, Maacott, Center Hill and several places out there.

Q. What time would you get back?

A. By leaving early in the morning we come back around three-thirty or four o'clock.

Q. In other words if you leave at six-thirty in the morning you would get back at three-thirty or four?

A. Yes.

Q. What time would you get back if you left at eight o'clock?

A. Pretty close to six, I imagine.

Q. What time did Mr. Ennis tell you to leave in the morning on these truck deliveries?

A. He told us to go to work at eight o'clock when we were supposed to go to work and we told him we were going to leave early and he would be glad of it and thank us for doing it.

Q. When you left early in the morning you got in early in the afternoon?

A. Yes.

Q. Did you then work up to six o'clock right on?

A. Yes.

Q. Did you tell them you worked overtime?

A. I didn't do nothing about that. If we worked overtime that afternoon he would lay us off the next day or something like that to make it up.

By Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Downing:

Q. Did you ever leave on one of these long runs as late as ten or ten-thirty?

A. No, sir.

Q. What is the latest you ever came in from making deliveries?

A. Seven-thirty.

Q. Where had you been?

A. On the East Coast.

Q. How often did you go there?

A. I went there that time with their truck driver.

Q. A kind of special trip, was it?

A. It was an oversized car for one man.

Q. That was not a part of your regular run?

A. No, sir.

Q. Herman, in unloading the goods from the freight cars do you stack them on the platform?

A. We try to get them in stock.

Q. Inside the warehouse?

A. Yes.

Q. And did you stack them there on that particular spot on the platform or stack them in the warehouse?

A. They have a two story building and a pulley and rope. We put it in there and get together and pull it up by that rope.

Q. In other words the unloading was not finished until you get it in the warehouse and stacked?

A. Yes, sir.

Q. Did any goods come in there by truck?

A. Yes, sir.

Q. Did you have any duties about getting that into the warehouse?

A. Yes, sir.

Q. What did you do with it?

A. We had to carry them in to the warehouse.

Q. Who did that?

A. The three boys working there.

Q. How often did you have to unload those goods, how often did that happen, how often did the trucks there make deliveries?

A. Sometimes twice or once a week.

By Mr. Downing:

That is all.

Re-Cross Examination.

By Mr. Kurz:

Q. When did you leave Central Paper Company?

A. In October.

Q. Where did you go to work then?

A. The Express Company.

Q. Why did you quit?

A. We had a little confusion, Mr. Enis and I, them stacking stuff on the platform and had bags out there and they were short of some bags and before I left they picked on me and I had to pay for them.

Q. There was a dispute then about something due the company?

A. No argument, he just said I had it and I had to pay for it and he told me he couldn't use me any more.

Re-Direct Examination.

By Mr. Downing:

Q. They were empty paper bags?

A. Yes.

Q. How much did you pay him?
A. I don't remember now. I have got the receipt home.
Q. Did you pay it, did you have to pay him?
A. Yes.

Re-Cross Examination.

By Mr. Kurz:

Q. Had you been short of bags before then?
A. Yes, sir, and if they are sitting on the platform Mr. Fairfield later told me to put them back in the house.
Q. What else were you short down there?
A. They had some paper napkins one time.
Q. Anything else?
A. And some tin ware. They had some garbage pails they failed to put on there.
Q. How often did these things happen?
A. Just three times, the garbage pails, the napkins and the bags.

Re-Direct Examination.

By Mr. Downing:

Q. Did they charge these things to you all three times?
A. No, sir, just the bags the last time.

Counsel for the respective parties and the witness waived the reading and signing of the deposition by the witness.

873 Thereupon, WALKER WILLIAMS, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:

Q. You are Walker Williams?
A. Yes.

Q. You work for the Central Paper Company?
A. Yes.
Q. How often have you been working for them?
A. About fifteen years or a little better.
Q. What is your job now, Walker?
A. Well, I have been in the warehouse after they took me off of the truck driving so long but once a boy quit and they put me back on the truck and I am driving in the City.
Q. Where do you go on the truck?
A. In the City.
Q. When did you go on the truck the last time?
A. About a month ago.
Q. Before that you were in the warehouse for how long?
A. I was in the warehouse for about a year.
Q. And before that you were on the truck?
A. Yes.
Q. How long were you on the truck that time?
A. I was on it as long as I was working for them.
Q. That has been nearly fifteen years?
A. That is right.
Q. Walker, when you were on the truck did you do anything outside of driving the truck?
A. Yes, when I came back to the warehouse I helped them unload cars and get up loads.
Q. Suppose we start off by you stating what your regular schedule is, when do you go to work?
A. Eight o'clock.
Q. When do you get off?
A. Six o'clock, supposed to. Sometimes we are behind in the work and we catch it up.
Q. Eight to six is your regular time?
A. Yes.
Q. Five days?
A. Yes.

Q. How much for lunch?
A. An hour.
Q. How about on Saturday?
A. We knocked off at one o'clock on Saturdays.
Q. Eight to one?
A. Yes.
Q. You said a while ago that sometimes you didn't finish at six. How often do you work after six o'clock?
A. According to the work we have to do. If we have the work to do we just pitch in and work.
Q. I am just asking you how often that happened?
A. I would say about twice a month.
Q. How late did you work?
A. Six-thirty or seven.
Q. What is the latest you worked?
A. Around about seven.
Q. Did you always go to work at eight?
A. Yes.
Q. When you were on the truck were you ever on any of those long runs in the country?
A. Yes, sir, that is what I did all the time until I was put in the warehouse.
Q. Did you ever leave the warehouse before eight o'clock?
A. I didn't leave the warehouse, I always left the garage where we left the truck the night before.
Q. When did you leave?
A. Seven-thirty to a quarter to eight.
Q. And what hours would you leave early?
A. In order to make the East Coast from here to Melbourne.
Q. When did you leave?
A. Seven-thirty to a quarter to eight.
Q. What runs would you leave early to make?
A. Melbourne.
Q. Any other runs?

A. Leesburg.

Q. How often would you go to the East Coast?

A. Once every two weeks.

Q. How often to Leesburg?

A. Every two weeks.

Q. Were there any other long runs when you would leave early in the morning?

A. No, sir, we only had just short runs besides that.

Q. When would you leave then?

A. Around eight o'clock on the short runs.

Q. Then it was only on the East Coast run and Leesburg run that you left at seven-thirty?

A. Yes.

Q. In the same week or different weeks?

A. Different weeks.

Q. You left at seven-thirty one day a week only?

A. Yes, on them runs.

Q. One week you would go to Melbourne and the next week you would go to Leesburg?

A. Yes.

Q. And outside of that you went to work at eight. It was thirty minutes early once a week. Have I got that straight?

A. Yes, sir, in my opinion I believe you have.

Q. So far as you working overtime you said twice a month you worked as late as six-thirty or seven?

A. That is right.

Q. That was as often as you did it?

A. Yes, sir, in running behind and getting out our city loads we had to do that to get our work caught up with.

Q. How often would that happen?

A. Well, I would say about every two weeks or something like that.

Q. When you worked after six o'clock at night did Mr. Enis or Mr. Fairfield give you time to make that up?

A. Yes.

Q. Did they give it to you the next day or the next week or when?

A. Yes, when we were behind we would catch up and when it became kind of slack and we had a slack day he would let us off for an hour.

Q. Would that always be in the same week or the next week?

A. It would be about the next week.

Q. It would be the next week?

A. Yes, I would say the next week.

Q. Now Walker, on these thirty minutes early in the morning leaving, did they give you time off for that?

A. No, sir.

Q. Who is your boss?

A. Well, I would say Mr. McGehee is my boss.

Q. I am talking about down at the plant?

A. Mr. Enis.

Q. Did he know or did you tell him that you were late coming back on these runs?

A. Yes, sir. I told him.

Q. What did he say?

A. He would say it was good of me, is all he said.

Q. D d you put these extra hours, this extra time, on this daily time sheet that I am showing you?

A. No, sir, if I must say.

Q. Why didn't you?

A. If I must tell you, Mr. Enis told us he just wanted straight time on these sheets, from eight to twelve and twelve to one for lunch and one to six.

Q. How did he happen to tell you that, Walker?

A. Well, we put it on there once or twice.

Q. Who do you mean put it on there?

A. Me and Theodore Benjamin and Richardson who has just left here.

Q. What happened when you would put it on there?

A. He told us he didn't want it on there and I don't know what he did about it and I asked what he was going to do about it if he didn't want it put on there.

Q. What did he say.

A. He said he wanted straight time on there, come on at eight and work until twelve and off at six.

Q. What happened to the entries that you put on there showing overtime, did he pay you for it? I am talking about the occasion he told you not to put anything on there. Did he leave it on the sheet or did he rub it out?

A. I didn't rub it out.

Q. Did anybody?

A. I don't know. I have never known that part of it.

Q. Did you get paid for that?

A. No, sir.

Q. Ater that did you follow his instructions?

A. No, sir, I think he got a letter from the boss that we must put it on there right and since that he has been putting it on there and paying us.

Q. When did that letter come in?

A. About the first of September of this year, I think. Directly after Christmas I believe he called my attention to it.

Q. You said first it was summer and then Fall, when was it that you first started putting it down there right?

A. I can't remember but I do remember he said he got a letter that the boss wanted these sheets filled out right.

Q. How long ago was that?

A. I would say about the first of the year.

Q. 1946?

A. That is right.

Q. In this last month I believe you have been making deliveries here in the City?

A. Yes.

Q. Do you work a regular schedule in the city?

A. Yes.

Q. Before that when you were on the trucks, especially on the long runs, did you always take your hour for lunch?

A. No.

Q. How much time did you take for lunch out on the long runs?

A. About twenty minutes, I believe. I am fighting to get back and for that reason I would not say I took an hour for nothing.

Q. When you came back in how much lunch time did you show on the sheets?

A. Well, I just put the regular time on it.

Q. What is the regular time?

A. Eight to twelve, twelve to one and when the letter came in I put on there just what time I did take.

Q. That was in January of this year?

A. Yes.

Q. Did you ever tell Mr. Enis or anybody else out there that you were not taking your full hour on the run?

A. I did.

Q. Who did you tell, did you tell him?

A. I told him and Fairfield.

Q. What did they say?

A. They didn't say anything.

Q. Did they tell you to put down an hour or the real time?

A. No, sir, just like I say, they came to Mr. Enis and told him to do that.

Q. When you were out on the short runs did you take your full hour for lunch?

A. No, sir.

Q. How much time did you take on the short runs?

A. I don't know. Sometimes I would have it on the seat with me.

Q. When you made city deliveries how much time did you take?

A. An hour.

Q. When you were on the truck regularly like a year ago, do I understand you took only one long run a week, there to the East Coast?

A. Yes.

Q. How many days were you on short runs outside of the City?

A. Every two weeks we would go to Sandford. Like we would make Sanford today the following day we would go to Lake County.

Q. Is Sanford a long run?

A. No, sir, it is a short run. We made Sanford and Obeda together and we would make Lake County.

Q. And you took only thirty minutes for lunch on that run?

A. Yes.

Q. What other short run?

A. Lake County.

Q. Is that long or short?

A. Short.

Q. How much time for lunch on that one?

A. About twenty minutes.

Q. You went over there every week?

A. Yes.

Q. How many days did you make city deliveries?

A. The days I was in town, if I went to Sanford today I would be in town the rest of the week.

Q. Did you make deliveries on Saturdays?

A. Yes.

Q. Did you ever get a bonus?

A. Yes, sir.

Q. How long have you been getting it?
A. I would say about five years. If I must ask the boss will it be alright?
A. Yes, it is alright.

By Mr. Fairfield:
I imagine that is right.

By Mr. Downing:
That is all.

Cross Examination.

By Mr. Kurz:
Q. Walker, how often would you get a full car to unload at the warehouse?
A. Before the War we used to get them pretty regularly but we don't get them now only every other week.
A. I think it was a fine paper car.
Q. Seven full cars?
A. We only unloaded two solid and the rest were part cars.
Q. When did you have some before that?
A. About a month ago, I think.
Q. How many did you get in then?
A. I think it was a fine paper car.
Q. Was that a full car?
A. A part car.
Q. How long did it take you to unload a full car, I mean this part car?
A. We couldn't do anything but unload that car that day and we would load our city trucks for the following morning.
Q. On that day you didn't do any delivering?
A. No, sir.

Q. How long would it take you to unload a full car?
A. I really don't know, according to what was in it.
Q. You said you would get a part car about twice a month?
A. Sometimes, and maybe we might get one and then again we might not get it. I just can't estimate on that.

By Mr. Kurz:
That is all.

Re-Direct Examination.

By Mr. Downing:
Q. Did you ever put any stuff in the warehouse that the trucks left there?
A. Yes.
Q. How often was that?
A. Practically they would bring stuff there three or four days, as often as three or four days.
Q. As often as three or four days a week?
A. Yes.
Q. Did you ever help unload any with customer's names printed on the case, on the goods?
A. No, sir.

Counsel for the respective parties and the witness waived the reading and signing of the deposition by the witness.

882 Thereupon, THEODORE BENJAMIN, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Downing:
Q. You are Theodore Benjamin?
A. Yes.

Q. You work for Central Paper Company?
A. Yes.
Q. How long have you worked for Central Paper Company?
A. Entering into the tenth year.
Q. What is your job there now?
A. Truck driver.
Q. Have you always been a truck driver?
A. Well for about a year and a half I was in the warehouse and the other times I drove a truck.
Q. When did you leave the warehouse last?
A. Yesterday afternoon.
Q. I mean how long has your job in the warehouse ended, are you in the warehouse now or a truck driver?
A. Truck driver.
Q. How long have you been a truck driver this last time?
A. Since last November.
Q. Before that you were in the warehouse for a year and a half?
A. Yes.
Q. And then before that you were a truck driver?
A. Yes.
Q. Now during the time you have been there, let's say for the last three years, have you had any regular schedule of hours you were supposed to work?
A. Yes.
Q. What were they?
A. Fifty hours a week, from eight in the morning until six in the afternoon.
Q. How much time for lunch?
A. One hour.
Q. How much time did you work on Saturday?
A. From eight to one.
Q. When you were a truck driver did you spend all of your time driving a truck?

A. From the time I was out I would spend time delivering. I would have a country run and I would make that and sometimes I would not deliver until the next day.

Q. When you were a truck driver did you do any work around the warehouse at all?

A. Yes.

Q. What kind of work did you do?

A. Anything that came handy, unload cars, get up orders, wait on customers.

Q. Let's take a typical day along there. What did you do first?

A. Clean up the office and load trucks.

Q. And then you went on your deliveries?

A. Yes.

Q. On the average day what time did you leave on deliveries?

A. Around ten-thirty or eleven o'clock.

Q. You say you spent the first two and one-half or three hours in office and warehouse work?

A. Yes.

Q. What time would you ordinarily come back from your delivery run?

A. Sometimes around five-thirty and again if the office was closed I couldn't do much delivering, and if I didn't get my orders off I would start out the next morning.

Q. When the office was already closed what time would you get in?

A. When I was working in the city it would be six o'clock and when making the country runs sometimes it would be seven or seven-thirty getting in.

Q. Did you ever get in from your short runs earlier than five-thirty in the afternoon?

A. Yes, sir, sometimes three-thirty.

Q. When you did get in early what did you do?
A. I would go to work in the warehouse.
Q. Doing wh t?
A. Unloading cars and straightening up the stock.
Q. Did trucks ever deliver goods there?
A. Yes.
Q. Did you have anything to do with putting it into the warehouse?
A. Yes.
Q. How often did you load or assist in loading, unloading freight cars?
A. Sometimes once a month and sometimes twice or three times a month.
Q. How many cars come in there the last week?
A. I think five or six.
Q. Is that heavier than usual?
A. Yes.
Q. How often do trucks deliver goods?
A. Sometimes two or three times a day and sometimes two or three times a week.
Q. Was it or not a part of your job as truck driver to get these goods into the warehouse after they were unloaded on the platform?
A. Yes, sir, if I was there I would go to work and get it in. They didn't say whether it was my job or not.
Q. If you were there you helped?
A. Yes.
Q. And if you were out on a run you could not help because you were not there?
A. That's right.
Q. Theodore, did you have any long runs out in the country to make deliveries on?
A. Yes.
Q. Where were your long runs?
A. Well, I was going to Wildwood and my last stop would be in Oakland.

Q. Your long run was to Wildwood and back to Oakland?

A. Yes, sir.

Q. Did you have any long runs?

A. None other than those. I would go into Sanford and back by Obeda.

Q. Is that a long or a short run?

A. Short run.

Q. You had only one long run?

A. Yes.

Q. Did you ever go to the East Coast?

A. One year I went down there.

Q. How often did you make the Wildwood run?

A. Every other Monday.

Q. When you were on the East Coast did you have that run regularly?

A. Every two weeks.

Q. What day did you make that?

A. On Fridays.

Q. How often would you make it for Sanford, on the Sanford run?

A. Every two weeks.

Q. What day?

A. Thursdays.

Q. On the long runs did you ever or not leave the warehouse earlier than eight o'clock?

A. When I have a big load I leave around seven-thirty.

Q. On the long runs did you or not have a big load?

A. Sometimes I did and sometimes I didn't, depends on the merchandise we have in the warehouse to fill the orders.

Q. Can you state how often you went out on your runs as early as seven-thirty?

A. For the last three runs I have not been going at seven-thirty because I didn't have very much of a load.

Q. I am talking about the three years you were a truck driver, how often did you leave at seven-thirty?

A. Every time I had a long run.

Q. How often was that?

A. Every two weeks.

Q. Was your truck always heavily loaded during that long run?

A. Yes.

Q. Was that on the Wildwood run?

A. Yes.

Q. A year ago when you were on the East Coast every two weeks, did you leave early then?

A. Yes.

Q. How early?

A. Seven-thirty. I couldn't get into the garage any earlier.

Q. Did you sign a daily time sheet, like this, Exhibit #1?

A. That is the only kind I ever signed.

Q. When you left at seven-thirty what time did you put down there?

A. When I would go to the East Coast I would just put down eight o'clock.

Q. Why did you put down eight o'clock?

A. That is the way the Manager had me to do it, because when I got back I would just put it down eight o'clock.

Q. What about going to Wildwood?

A. That was the same way.

Q. What about when you got in about six o'clock at night, what time did you put on here?

A. From eight to six.

Q. Suppose you got in at seven-thirty?

A. If I got in at seven-thirty they would let me off an hour earlier the next evening.

Q. The same week?

A. Yes, and if we were too busy he said you can get off the next week and he would let us off to make up for that time.

Q. What did you put on the time sheet?

A. Six o'clock.

Q. Why did you put it eight and six?

A. That was the way he told us to put it in.

Q. How do you mean by "us"?

A. I mean the other fellows, the other drivers.

Q. When you were on a long run did you always take an hour for lunch?

A. No, sir.

Q. What did you generally take?

A. About half an hour.

Q. How much time do you show on this daily time sheet?

A. Half an hour. Maybe we have lunch at twelve and are back at twelve-thirty and put it twelve-thirty.

Q. You always showed your lunch time as thirty minutes?

A. Yes.

Q. Suppose the time sheet shows you always put an hour for lunch, how would you explain that?

A. I can't explain it because it didn't take an hour and I just put down what time it took.

Q. You are sure of that?

A. Yes.

Q. Even if the time sheet don't show that?

A. Yes.

Q. Now you mentioned getting time off for the hours extra time you put in, after six. Are you sure you got time off for the early time in the morning?

A. In the morning like I would come at seven-thirty I got time off for that.

Q. You know you did that?

A. Yes.
Q. How do you know?
A. He let me have time off.
Q. Did he know that you were leaving early?
A. Sometimes he would call the garage to see what time we left there, so I was told.
Q. Who was your boss Theodore?
A. Mr. Ennis.
Q. This is Mr. Ennis here?
A. Yes.
Q. How long has he been your boss?
A. I recon around four years.
Q. Do you get a bonus?
A. Yes.
Q. About how long have you been getting one?
A. About three years, as far as I can remember, I think it is.
Q. Theodore, do you ever recall getting in and unloading or making delivery of goods that were specially printed with the customer's name or labels on them?
A. Yes.
Q. What customer's were they?
A. Yowell & Drew.
Q. What business are they in?
A. Department store.
Q. What special printed goods did they get?
A. Millinery boxes and roll paper.
Q. Do you know where it came from?
A. No, sir.
Q. Do you know of any other customer on special printed stuff?
A. Dixon & Ives.
Q. What did they get?
A. Boxes and roll paper, millinery boxes.
Q. Do you know where they came from?

A. The last paper came from a car in Jacksonville.
Q. Was it a whole or part car?
A. A whole car.
Q. You helped unload it?
A. Yes.
Q. Do you know of any other customers on special printed stuff?
A. Orlando Steam Laundry.
Q. What did they get?
A. Millinery boxes.
Q Did they get any special printed laundry boxes or dry cleaning boxes?
A. Yes.
Q. Where did they come from?
A. They come from the Jacksonville car.
Q. Whole or part?
A. The last that I can remember for the Steam Laundry they came when they were shipping stuff down in a truck.
Q. Do you remember any other things of that sort?
A. No, sir.
Q. How often did those kind of goods come in?
A. About once or twice a year that I can remember.
Q. You helped to unload them?
A. Yes.
Q. Did you deliver any of them?
A. Yes.

By Mr. Downing:
That is all.

Cross Examination.

By Mr. Kurz:
Q. How much of your time do you spend unloading cars?
A. A day and sometimes a day and a half.

Q. Quite often would you be a month?

A. About once a month that I can recall, not every month, just sometimes, not often.

Q. When you do that do you also make deliveries on the same day?

A. No, sir, sometimes we don't make deliveries the same day

Q. Sometimes you do though?

A. Yes.

Q. And I believe you said that these boxes and roll paper for Yowell & Drew and Dixson & Ives and for the Orlando Steam Laundry all came from Jacksonville?

A. They came in the Jacksonville car.

Counsel for the respective parties and the witness waived the reading and signing of the deposition by the witness.

Whereupon, THEODORE A. ENNIS, recalled, testified as follows:

892 Further Cross Examination.

By Mr. Kurz:

Q. Mr. Ennis, who employed Miss Furber?

A. I think I did.

Q. Yes. Do you know whether Miss Furber signed an application for employment?

A. Yes, I believe she did.

Q. Did she sign one of these white forms that shows the basis of the employment and shows how much an hour and so many hours?

A. I believe she did, yes.

Q. Did you know that Miss Furber in filling out this time sheet would sometimes leave earlier in the afternoon but it still showed the regular hours on there?

A. No, sir, I didn't know that, I didn't know that she had done that

Q. Did you know it, or did you find it out at any time that she was not keeping this record every day?

A. Well, I think in one instance where she didn't sign it I happened to see it and I brought it to her and I instructed her again that she was to sign it four times a day, to follow instructions, that is what it was put there for, and at that time as well as I recall she had not signed it for that day.

Q. Since then, as far as you know, has she signed it regularly every day?

A. As far as I know, yes.

Q. What do you know about some of the truck drivers leaving early in the morning, earlier than eight o'clock, when they mde what they call long runs to the East Coast or to Obeda?

A. There has been times when we would have a big load and they would say that they were going to leave early and I told them it would be alright to leave early and I would give them the time off in the afternoon, overtime or any shortage of time involved.

Q. When they left, say, at seven thirty in the morning on these long runs, what time would you think they would come back to town?

A. They would come in at five or five-fifteen, sometimes, and then again at six o'clock.

Q. Did they ever come in after six?

Q.[A.] Yes, as well as I remember, six-thirty one time and in one instance I think they had trouble with the truck and came in as late as seven o'clock.

Q. What did you do about the extra hours, what instructions did you give them about keeping time records?

A. When they came in late, they were instructed to put down their time and if we were unable to make up the time, to give them time off, then we would pay for overtime.

Q. Did you tell them in putting down the actual hours, not to put down the actual hours they came to work and left?

A. No, sir, I did not.

By Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Downing:

Q. Will your books show all the overtime payments made to them?

A. They should because to have to account for the money.

Q. How long has it been since you paid overtime for such a purpose?

A. Last week, I think it was.

Q. Were you in here when Benjamin testified?

A. Yes.

Q. You were not here when Walker Williams testified?

A. No, sir.

Q. Did you or not receive a letter from the home office some time ago instructing you to see that these records were kept correctly?

A. Yes, sir, I received several of them, if I recall.

Q. With reference to the men leaving early, working after six o'clock, you know the occasions when it happened, didn't you?

A. For each time he was given his time.

Q. Answer the question first, did you know when it happened?

A. If they told me I would.

Q. They told you of these occasions when they were leaving earlier than eight o'clock and coming back later than six, didn't they?

A. Not in every instance.

Q. Did you permit that in some instances?

A. I think in one or two instances before I got the instructions clearly straightened out, there was one or two instances I believe they were signed at eight o'clock and if they left at seven-thirty they would be given the time off however.

Q. Three men and one woman have testified that you directed them to sign only the schedule hours? Is that correct or not?

A. That is not.

By Mr. Downing:
That is all.

By Mr. Kurz:
That is all.

Counsel for the respective parties and the witness waived the reading and signing of the deposition by the witness.

Testimony taken in the above stated cause was continued at the Lakeland, Florida, branch, namely, the Lakeland Paper Company in its office at Lakeland, Florida, June 11th, 1946, there being present Counsel for the respective parties as heretofore named as being present at the hearing in Orlando on the same date.

It is Stipulated And Agreed the evidence of coverage adduced in the depositions taken at Orlando would be considered as typical of the coverage of the Lakeland Paper Company.

It is further Stipulated And Agreed Clarence Stephens, the truck driver employed by the Lakeland Paper Company, performs the same duties and types of duties as

the three truck driver witnesses, Herman Richardson, Theodore Benjamin and Walker Williams, whose depositions were taken this day in Orlando and the said Clarence Stephens works a regular schedule of hours from eight to six, Mondays through Fridays, with an hour off for lunch and from eight to one on Saturdays.

It is not contended by the Plaintiff that the records of hours kept at Lakeland are inaccurate.

Thereupon, EUGENE LALLANCE being first duly sworn testified as follows:

895 Direct Examination.

By Mr. Downing:

Q. Do you have any duties in connection with the warehouse?

A. The warehouse, yes.

Q. What are those duties?

A. Loading the trucks, supervision of the loading of the trucks.

Q. I will ask you generally if you act as shipping clerk and supervisor?

A. Yes.

Q. Do I understand that as cashier you perform all the necessary bookkeeping operations at this branch?

A. Yes.

Q. You have no assistants?

A. No, sir.

Q. Other than your duties as cashier and your duties as receiving and shipping clerk do you have any other duties?

A. Waiting on the customers that come in here.

Q. Taking their orders?

A. Yes.

Q. And getting up their orders?

A. When the warehouseman is not here.

Q. Who is the warehouseman?

A. At present a Negro by the name of John Hunley.

Q. Is he a regular employee?

A. He is until he quits.

Q. Is he or is he not a part time employee?

A. No, sir, he is a full time employee as far as I can keep him.

Q. He is not an employee on extra labor voucher?

A. Yes, sir.

Q. How long have you been doing that?

A. He came here about two weeks ago.

Q. Did he ever work for you before?

A. Yes, sir.

Q. How long at that time?

A. About three weeks.

Q. Was he employed then on extra labor voucher?

A. Yes.

Q. What do you do for a warehouseman when he is not around?

A. As long as he is working here he does the work. If he is busy in the back or something like that I would wait on the customers.

Q. If he is not here what do you do?

A. I work temporarily until we get somebody else.

Q. You do the warehouse work also?

A. Yes.

Q. Since you have been here what proportion of the time have you been without a warehouseman?

A. Well, I would not know how to answer that, maybe a day or two and between times when they quit we would find somebody else.

Q. Well, then to summarize the question, as cashier you do the bookkeeping?

A. Yes.

Q. And also as receiving and shipping clerk?

A. Yes.

Q. And in the business as a warehouseman you do the warehouseman's work a part of the time?

A. Yes.

Q. Can you state approximately what proportion of the time you spend on your bookkeeping duties and what part as receiving and shipping clerk?

A. Receiving and shipping clerk is checking the merchandise in, seeing that the cars are ready to proceed on to the next destination.

Q. Which would be Tampa?

A. Yes.

Q. You mean full cars that had been partly unloaded up the line?

A. Yes.

Q. Did you ever get any full cars?

A. One.

Q. Do you ever get any deliveries by truck that you check in?

A. Yes.

Q. How often do you get deliveries by truck?

A. That is hard to say.

Q. Do you get some every week?

A. Well we had one this week. Some weeks we don't get any at all.

Q. Did you have any last week?

A. Yes, sir.

Q. When deliveries are made by truck does the truck driver unload the goods on the platform or do you and the warehouseman do that?

A. He unloads it at the door.

Q. And you take them from that point into the warehouse?

A. Yes.

Q. And if the warehouseman is not there do you move it in yourself?

A. If it is necessary.

Q. Would it be necessary?

A. If it is blocking up the entrance and you can't get in and out I have to move it, otherwise wait until the warehouseman comes.

Q. I asked if you could state the proportion of the time you spent on bookkeeping and the proportion of the time you spent as receiving and shipping clerk, and you stated the number of things you did but you haven't stated the respective proportions of time you spent in each of the two groups of duties. Could you give us your best estimate on that?

A. Well, I don't know how to answer that because you don't just sit down and do the book work in one operation. It is strung out throughout the day.

Q. And your warehouse duties are also spread out during the day?

A. Except unloading the trucks.

Q. Only unloading the trucks. When is that done?

A. Whenever it is ready to go.

Q. Is that in the morning?

A. Sometimes and sometimes in the afternoon.

Q. That is strung out throughout the day too?

A. Yes, it is not the same time during the day.

Q. Do you spend all your time on bookeeping and shipping and receiving clerk and doing warehouse work in the absence of the warehouseman?

A. Yes, and write up the orders, getting the money and seeing that they get the merchandise when customers come in here.

Q. You do all of that?

A. Yes.

Q. Can you not state approximately the portions of time you spend on these various jobs?

A. I just would not know how to estimate it.

Q. Which one takes the most time?

A. Waiting on the trade.

Q. How much takes the next most?

A. Bookkeeping work.

Q. Then your receiving and shipping clerk duties takes the next?

A. Yes.

Q. And the fourth, which you spend in doing the warehouseman's job when he is not around?

A. Yes.

Q. That covers your whole job?

A. Yes.

Q. And you spend all your time in these four general activities?

A. Yes.

Q. Who is in charge of this branch over here?

A. Mr. J. H. Plott.

Q. Is he your boss?

A. Yes.

Q. You have one truck driver here?

A. Yes.

Q. Is that Clarence Stephens?

A. Yes.

Q. How long has he been employed here?

A. Mr. Plott can answer that question, he was here before I was here.

Q. Is Mr. Plott Clarence's boss?

A. Yes.

Q. Is Mr. Plott Hunley's boss?

A. Yes, sir.

Q. I don't believe you stated the proportionate time since you have been here that you have been without a regular warehouseman?

A. Well it will be two years this September. I imagine the total time would be about three weeks Without one.

Q. Most of the time you have had warehousemen, practically all the time?

A. Yes.

Q. How much of the time has Mr. Plott been in and out of the warehouse?

A. He can answer that better than I can.

Q. I understand that, but as far as I know he will not be giving any deposition this morning and since you have been here you are of course in a position to know?

A. During working hours?

Q. Surely, we are not trying to pin anything on anybody, you are in charge when you are here and he is away, are you not?

A. Yes.

Q. That is what we are getting at. You can state in terms of how much time you are in charge here in his absence or in any other way you want to put it.

A. In a normal course of business I would say Mr. Plott is here about two hours of the day.

Q. What is he doing the rest of the time?

A. That I don't know.

Q. Does he or not solicit orders from the trade?

A. Yes, sir.

Q. Now how much of the time is the truck driver out on his run making deliveries?

A. That depends on the run he has got. If he has a full load for the city here he will be gone six or eight hours. It depends on the merchandise on the truck.

Q. On the average week end and week out how much time is he out on his runs?

A. Well, that is hard to answer.

Q. Do you have any authority to recommend hiring and firing?

A. Well, if a man is not doing his job, I mean if we don't have any warehouseman, I will tell Mr. Plott we need one.

Q. Do you yourself sign in and out on the time sheet?

A. No, sir.

Q. Is it a part of your job to keep track of this time sheet on the truck driver and the warehouseman?

A. Yes.

Q. Do you get a bonus?

A. Yes.

Q. How long have you been getting it?

A. Since June a year ago.

Q. Do you know the basis on which it is paid?

A. Yes, sir.

Q. What is it?

A. First year is 15% of the preceding year's salary.

Q. You haven't mentioned any memorandum or contract which purported to contain the terms of your employment?

A. What do you mean by that statement, terms of employment?

Q. Statement that reflects on so many hours at a certain hourly rate.

A. No, sir.

Q. Have you had any raises since you came in here?

A. Yes, sir.

Q. When you were hired originally who hired you?

A. Mr. M. R. McGehee.

Q. On what basis?

A. What do you mean by basis?

Q. Salary by the hour or how?

A. By the week.

Q. How much?

A. Forty dollars.

Q. Straight salary?

A. Plus bonus.

Q. Was there any understanding at the time as to the number of hours you were to work for that salary?

A. He said fifty hours.

Q. Now as to reference to the bonus I understand you had been in here nearly a year when you got that?

A. Nine months.

Q. Was that promised you when you first came here?
A. Well it was discussed.
Q. That you would get it later?
A. When the normal time for it to start I would get it.
Q. And you said you had been raised, when were you raised?
A. March a year ago.
Q. How much were you raised to?
A. Two dollars and fifty cents a week.
Q. That is $42.50?
A. Yes.
Q. Who told you about that raise, anybody, or did you just get it in your pay?
A. Yes.
Q. Was that information given you that you were on an hourly work basis?
A. No, sir.
Q. Was anything said then about you having to work more hours?
A. No, sir.
Q. You are still getting $42.50?
A. Yes.

By Mr. Downing:
That is all.

Cross Examination.

By Mr. Kurz:
Q. How often do you get tool cars?
A. Every shipment outside of the one is a tool car.
Q. How often do you get them?
A. This week we got five, all came at once.
Q. How much did you get last week?
A. Maybe one, I don't recall exactly.

Q. Is five an unusually large number to come in, in one week?

A. Yes.

Q. On the average during the time you have been here how many would you get in the course of a month?

A. I can't answer that, I don't know.

Q. Who handles the credit of customers?

A. Mr. Plott.

Q. So you pass on any credit applications?

A. No, sir.

Q. When Mr. Plott is out of the office who handles your credits then? Suppose somebody comes in and wants to make an order for delivery, not C. O. D. who handles on that? You won't do it unless he approves?

A. No, sir.

Q. Who makes prices for customers?

A. I suppose the Jacksonville Paper Company.

Q. Suppose somebody comes in here and wants to buy a role of butcher paper, who makes the prices?

A. I write up the order and price it.

Q. Who tells the warehouseman to get up the orders, and so forth?

A. I do.

Q. Who directs the truck driver as to where to go and what to do?

A. Actually the orders do. He writes the orders himself.

Q. Who gives him the orders.

A. By orders I mean merchandise invoices. He writes those up.

Q. Who gives him those invoices?

A. I give him the invoices.

Q. Who handles the petty cash fund?

A. I do.

Q. Does that involve the payment of small bills rendered against the company?

A. Yes.

Q. Who makes the bank deposits?
A. I do, they are mailed to Jacksonville.
Q. Do you keep a record of the receipts?
A. Yes.
Q. And make the report?
A. Yes.

Re-Direct Examination.

By Mr. Downing:

Q. What is the limit to which you can pay bills out of petty cash?
A. $10.00 is the maximum on any one bill.
Q. You mentioned pricing goods yourself, you do that by getting the prices out of the price book?
A. Yes.

Re-Cross Examination.

By Mr. Kurz:

Q. When an order comes in for a shipment of merchandise on credit who decides whether it is to be shipped out or shipped C. O. D.?
A. Sometimes Mr. Plott does if it is a new customer. If it is an account on the books and already established I do.
Q. You decide whether or not an established account will be extended further credit, do you?
A. In some instances.
Q. What do you mean by some instances?
A. Some accounts go ahead and get merchandise whether the account justifies it or not.
Q. Who decides whether the account justifies it or not?
A. Mr. Plott.
Q. Suppose he is not here?

A. If it is for immediate shipment I go by past experience.

Q. Then you do pass on those accounts, do you?

A. Yes.

Q. Do your salesmen bring in orders that they get on their routes?

A. Yes.

Q. Do they turn them over to you?

A. Yes.

Q. What do you do with them?

A. I initial a credit O. K., on the established accounts.

Q. Do you have to do that before the merchandise is shipped?

A. Yes.

Re-Direct Examination.

By Mr. Downing:

Q. How many salesmen do you have?

A. Mr. Plott and one more.

Q. Who is the other one?

A. Mr. Boyette. I believe his initials are T. T.

Q. Is Mr. Boyette a full time salesman?

A. Yes.

Q. How much time does Mr. Plott spend selling?

A. I imagine all the time he is out of the office.

Q. That is how many hours a day?

A. Well, eight hours a day I expect.

Q. Who send in or brings in the most orders, Mr. Plott or Mr. Boyette?

A. Mr. Plott.

Q. Now on Mr. Plott's orders is it or not correct that he sometimes passes on those credits by taking the orders?

A. I guess that would be right.

Re-Cross Examination.

By Mr. Kurz:

Q. I have here twenty-five orders dated June 10th Check these over and see how many were approved as a credit by you?

A. All of them.

Re-Direct Examination.

By Mr. Downing:

Q. How many of these were taken by Mr. Plott?

A. None of them.

Q. These are all Mr. Boyette's orders?

A. That is all that he turned in, yes, sir.

By Mr. Kurz:

That is all.

By Mr. Downing:

That is all

Counsel for the respective parties and the witness waived the reading and signing of the deposition by the witness.

State of Florida,
County of Hillsborough.

I, William H. Horne, a Notary Public in and for said County and State at Large, duly commissioned and qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that on June 11th, 1946, the aforementioned witnesses, namely, Theodore H. Ennis, Margaret R. Furber, G. S. Fairfield, Herman Richardson, Walker Williams, Theodore Benjamin and Eugene Lallance, who were of sound mind and body, were

by me first carefully examined, cautioned, and duly sworn to testify to the truth, the whole truth, and nothing but the truth; that they thereupon testified as above set forth; that the depositions were taken down and were reduced to writing by me; that the reading and signing of said depositions by the witnesses was waived by the said witnesses and by the said parties by their counsel.

I do further certify that I am not related by blood or marriage nor am I an employee or the attorney or counsel of any of the parties, nor am I a relative of or an employee of said attorneys or counsel or counsel or of the aforementioned witnesses, nor am I financially interested in the transaction.

In witness whereof I have hereunto set my hand and official seal this 15th day of June, 1946.

(Notarial Seal)

WILLIAM H. HORNE,
Notary Public, State of
Florida at Large.

My commission expires May 23, 1949.

PLAINTIFF'S EX. =1 FOR IDENTIFICATI(

Daily Time Sheet.

Branch Orlando.

Name	In A. M.	Signature	Out Noon	Signature	In Noon	Signature
A. Brower	8	A. B.	12	A. B.	1	A. B.
H. Richardson	8	H. R.	12	H. R.	1	H. R
T. Benjamin	8	T. B.	12	T. B.	1	T. B.
W. Williams	8	W. Williams	12	W. Williams	1	W. Williams
M. Furber	8/20	M. F.	12	M. F.	12/30	M. F.

Approved E, Manager.

Co

PLAINTIFF'S EX. =1 FOR IDENTIFICATION. W. H. H.

Daily Time Sheet.

Out Noon	Signature	In Noon	Signature	Out P. M.	Signature	In
12	A. B.	1	A. B.	6	A. B.	
12	H. R.	1	H. R	6	H. R.	
12	T. B.	1	T. B.	6	T. B.	
12	W. Williams	1	W. Williams	6	W. Williams	
12	M. F.	12/30	M. F.	5/30	M. F.	

Correct, G. S. F., Cashier.

PLAINTIFF'S EX. #2 FOR IDENTIFICATON. W. H. H.

Week Ending Saturday Night.

Branch Orlando.

Weekly Summary Time Sheets.

Name	Scheduled Hours	Record Number of Hours Worked							Total Hrs. Worked
		Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	
A Brower	50	....	....	9	9	9	9	5	41
H. Richardson	50	....	....	9	9	9	9	5	41
T. Benjamin	50	....	....	9	9	9	9	5	41
W. Williams	50	....	....	9	9	9	9	5	41
M. Furber	48	....	....	8.40	8.40	8.40	8.40	4.40	38.20

.....

Manager

PLAINTIFF'S EX. #2 FOR IDENTIFICATON. W. H. H.

Week Ending Saturday Night.

Weekly Summary Time Sheets.

Week Ending 9/8/45.

Scheduled Hours	Record Number of Hours Worked							Total Hrs. Worked	Remarks:
	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.		
50	....	....	9	9	9	9	5	41	.....
50	....	....	9	9	9	9	5	41	.....
50	....	....	9	9	9	9	5	41	.....
50	....	....	9	9	9	9	5	41	.....
48	....	....	8.40	8.40	8.40	8.40	4.40	38.20	.....

.....

Cashier

911 Filed Jul. 1, 1946

(Title Omitted.)

State of Florida,
County of Escambia.

I, R. E. Sayner, a Notary Public in and for the State of Florida at large, and an officer authorized by law to administer oaths, do certify that pursuant to the stipulation of the above parties by their counsel dated May 16, 1946, and filed on May .., 1946, I did, on May 23, 1946, at 5:30 o'clock P. M., at Room 208 County Court House, Pensacola, Florida, proceed to take the depositions of S. D. Robinson, J. O. Gilchrist and Claude J. Jones, who, after being by me first duly sworn (except in the case of S. D. Robinson, who testified upon affirmation), testified as hereinafter set forth, said testimony being upon oral examination, being taken down in shorthand by me, and reduced to typewriting by me, pursuant to said stipulation.

There were present James H. Shelton, Esq., attorney for the plaintiff, and Louis Kurz, Esq., attorney for the defendants.

Stipulation: It is stipulated and agreed between the counsel for the respective parties in this case that during each week since his employment on July 31, 1944, Mr. S. D. Robinson has spent substantial portion of his time in performing work in Interstate Commerce, as that term is defined in the Fair Labor Standards Act.

Mr. Shelton:

The reporter can put in the record at this point the stipulation we have just agreed upon, that Mr. S. D.

Robinson has in all weeks since his employment with this branch of the company, performed a substantial part of his work in Interstate Commerce?

Mr. Kurz:
Yes.

S. D. ROBINSON, a witness on behalf of the Plaintiff, testified under affirmation as follows:

912 Direct Examination.

By Mr. Shelton:

Q. Mr. Robinson, will you please state your full name?

A. Sherwood Delmar Robinson.

Q. Where do you live?

A. Route 3, Box 159, Pensacola, Florida.

Q. State whether you are now employed by the Pensacola Paper Company?

A. I am at present their employee.

Q. At what address does that company carry on its business in Pensacola?

A. 210 South Tarragona Street.

Q. Mr. Robinson, will you state on what date you were first employed by the Pensacola Paper Company?

A. To the best of my ability I went to work for them on the 31st day of July, 1944.

Q. State whether or not you have been continuously employed there since that time.

A. I have been continuously employed.

Q. Will you state whether there has been any substantial change in your duties over the period during which you were employed there?

A. My duties have been the same.

Q. Will you please state, Mr. Robinson, what your duties are with the company.

A. Well, my primary job is handling cash and handling accounts and records.

Q. Will you state what sort of work you do in handling cash?

A. I receive all collections that are turned in by the salesmen, that come into the office throughout the week, and also make cash sales over the counter and handle all that money.

Q. Will you state whether or not the Pensacola Paper Company has a petty cash fund?

A. It does have a petty cash fund.

Q. Who handles that petty cash fund?

A. I do.

Q. For what purpose or purposes is that petty cash fund used?

A. It is used to pay collect freight bills that comes in, pay extra labor out of, postage stamps, and local purchases that run to just small amounts.

Q. You state that you keep records. Will you state what records you keep?

A. Well, we have the records of, you might say, the bad debt records of people that have been owing the company for the last several years, which we handle in a current manner, that is, in making collections we make collections along that line, and it goes into the bad debt collection report sheet.

Q. Will you state who handles the accounts receivable records for the company?

A. That is, all the posting?

Q. All the posting, accounts receivable ledger.

A. I post all that.

Q. State whether or not any record is kept of transactions by the Pensacola Paper Company with the home office in Jacksonville?

A. They have a separate ledger.

Q. State whether or not you keep any of those records?

A. I handle that record.

Q. Will you state how you make up the extra labor pay roll?

A. Extra labor takes in men that are hired for periods of part days, usually, unloading cars, etc. They go to work there under the supervision of the shipping clerk, who handles the unloading of the cars. They make up a time sheet as to the hour they go to work and hour they get off of work, and initial that. Then after they are through it comes in to me for checking as to the number of hours, etc., in making the payments.

Q. Will you state whether when employees are first employed by the company they are some times put on the extra pay roll before they are put on the regular pay roll?

A. That has been the procedure for quite some time, but under the new management now I don't feel like we will have many extra labor workers, other than those unloading cars.

Q. When that has occurred in the past, state whether those employees who were temporarily on the extra labor pay roll were paid in the same manner as casual labor is paid?

A. They were.

Q. Was the record kept the same way?

A. They were kept the same way.

Q. State whether there is a man named George Foller employed at the Pensacola Paper Company?

A. He is the truck driver at the present time.

Q. Who keeps the record of his hours' work?

A. He makes up his own pay roll each day. The hour he comes in, and hour he goes out, and hour he checks out in the afternoon. On Saturdays that time sheet is given to me for correction and approval, and turned over then to the Manager, for his approval.

Q. If you have not so stated already, will you now state who pays freight bills when freight comes collect?

A. I pay those myself.

Q. Now, you have referred to the making up of the accounts receivable ledger. Will you state whether or not that ledger is made up from some other records in the office?

A. All the posting is done from invoices covering the debits and also credit memorandums covering credits and collections.

Q. State whether or not you have any duties in connection with the preparation of those invoices?

A. Well, not directly. I am authorized, of course, to sell to those people who come to the counter and collect, whether they are cash customers or regular monthly customers. I have authority to sell to them.

Q. I don't believe you quite got my question. Perhaps I can get at it in another way. Who adds up the totals of the customers' invoices?

A. I do that.

Q. Who makes the original entries?

A. I do that.

Q. State whether or not some of the original entries are made by anyone except you?

A. By Mr. Gilchrist.

Q. Mr. Gilchrist makes some of the entries?

A. Yes.

Q. State whether or not Mr. Jones, the shipping clerk, ever makes up those customers' invoices?

A. If he ever has, it has been an occasion where he did it under instructions of maybe the manager or someone who was tied up and could not do it himself. As far as checking the amounts, he had no authority to do that.

Q. What I am particularly interested in is the original entries on those invoices of goods purchased by the customary course in the ordinary course of things when such an entry is made on an invoice, who makes it?

A. For instance, we have a salesman that goes around and takes orders. He puts his prices in there and his quantities in the proper columns. Then those invoices come to the office for approval for credit and price check, and the price check is handled by Mr. Gilchrist and credits handled by myself. Then sometimes they go on to the shipping clerk, prepared for shipment or delivery, and then they are returned back to me for extensions in details.

Q. Do I understand that Mr. Jones, the shipping clerk, will use those invoices in getting up orders which he is getting up out of the warehouse?

A. That's right.

Q. When he has done that he will return the customers' invoices to you?

A. That's right.

Q. Did I understand you to say earlier that from those invoices you make up the accounts receivable ledger?

A. After they have been extended and totals are made and delivery has been made, all the invoices come back to me and they are ready to be posted.

Q. From the accounts receivable ledger do you make up any other papers or documents?

A. I have to make up weekly statements for each salesman. There are two salesmen, and at the end of the month I have to make up monthly statements for those customers who pay on a monthly basis.

Q. In what cases do you make up monthly statements?

A. These monthly statements cover the accounts in the City. They are made on the last of each month.

Q. State whether or not all accounts in the City of Pensacola are billed on a monthly basis?

A. They are not.

Q. What part of them in Pensacola are billed on a weekly basis? Is it a small number or large number?

A. There are quite a few of them on a weekly basis.

Q. Outside of the City of Pensacola are the bills to the customers made up daily or weekly?

A. Outside of the City of Pensacola they are made up weekly.

Q. I understand that both those weekly and monthly bills for the customers are prepared by you?

A. That's right.

Q. State whether or not your such statements are then transmitted to the customers?

A. Such statements are then given to the salesmen and they take them to the customers.

Q. State whether or not customers come to the warehouse and purchase goods over the counter?

A. They do, on some occasions.

Q. When they come, who sells goods to them over the counter?

Q. Usually if Mr Gilchrist is there he handles that, but sometimes he is out calling on the trade, and I attend to their business, or handle all procedure in the office, in that respect.

Q. Who is now manager of Pensacola Paper Company?

A. J. O. Gilchrist.

Q. How long has he been manager?

A. Since January 23, 1946.

Q. Prior to that time who was the manager?

A. J. E. Stanton.

Q. Who was the manager when you first started to work for the company?

A. J. E. Stanton.

Q. Was he manager continuously from then through January 23, 1946?

A. He was.

Q. Since Mr. Gilchrist has been manager, will you estimate what portion of your time is spent in selling goods over the counter?

A. I feel like ten percent would be a reasonable estimate.

Q. State whether or not that is the best estimate you can make?

A. Well I believe as near as I can that ten percent is about all that I cover there. When Mr. Gilchrist is there he is on the job and handles most of that stuff himself.

Q. When Mr. Stanton was manager what portion of your time do you estimate was spent in making sales of goods over the counter?

A. Possibly between ten and fifteen percent at that time.

Q. State whether or not letters are written from the Pensacola Paper Company to the home office in Jacksonville of the Jacksonville Paper Company?

A. You mean by myself?

Q. I asked you whether they were written. I was then going to ask you whether you did it.

A. Yes, they are.

Q. State whether or not you write such letters?

A. Such letters concerning my part of the work.

Q. Will you state the subjects covered in your letters to the home office?

A. Bad debt accounts, past due accounts.

Q. State whether or not you ever write letters to the home office about pay roll matters?

A. Yes, I do, occasionally, when necessary.

Q. State whether or not you write letters to the home office about merchandise received at the Pensacola establishment?

A. I make out the weekly merchandise report. Some times in case when merchandise has not been reported I write Mr. M. R. McGehee regarding those matters.

Q. State as nearly as you can how long it takes you to make out the weekly merchandise report?

A. Five or ten minutes.

Q. State whether or not in addition to the letters that you have mentioned there are some miscellaneous matters on which you write the home office at Jacksonville?

A. Occasionally an invoice is misplaced. I have to run down these missing tickets.

Q. State whether or not a system of files is maintained at the Pensacola Paper Company?

A. We have a filing system there.

Q. State who does most of the filing?

A. Those matters that are handled by myself, I file, and those Mr. Gilchrist, he has his own filing system himself.

Q. State whether or not credit reports are received at the Pensacola Paper Company?

A. They are.

Q. Who receives those reports?

A. I do.

Q. What company prepared them?

A. Dunn and Bradstreet.

Q. What happens to them when they are received?

A. One copy—we usualy receive two copies, and one copy goes to the home office and one is kept in the file.

Q. Who files the ones here?

A. I do.

Q. State whether you file anything else other than the correspondence which you have mentioned and the Dunn and Bradstreet reports which you have mentioned?

A. Well, I have a bad debt report file, which covers some correspondence on that. I also have the delinquent account.

Q. State whether you keep a file on delinquent accounts?

A. I do.

Q. State whether or not it is part of your job to approve credit for customers of the Pensacola Paper Company?

A. It is.

Q. Will you state about how much time is involved in that work in the course of a week?

A. Well, that would vary, of course, according to business. I would not be able to say any certain amount of time, because every invoice has to come before my desk for approval for credit.

Q. As a usual thing is that approval routine or is it not routine?

A. I had instructions ever since I have been there, Mr. Shelton, that nothing was to go out unless I approved it.

Q. What I am trying to get at, if I can, and I may not be able to get an exact answer, but I would like to get some idea about how much difficulty is involved in your giving such approval or refusing such approval—about what part of your day is involved that way, if you can, state it on that basis.

A. Well, you have local accounts, people who have been in business for a long time, and there is very little question as to their credit. They are established. Some cases I will not approve of going out, because we have had business dealings with them, where they would not

pay their bills, and in a case like that I would send it out collect.

Q. State whether or not there is a place on the invoice where you indicate whether credit is approved or not approved?

A. There is a place for my initials.

Q. At the present time, Mr. Robinson, how many regular employees are employed by the Pensacola Paper Company?

A. There are six on the pay roll.

Q. In addition to yourself, would you give the names of the others and their jobs?

A. T. H. Waters, Salesman, W. F. Norden, Salesman, J. O. Gilchrist, Manager, C. J. Jones, Shipping Clerk, George L. Foller, truck driver.

Q. Of those six employees, will you state which ones spend over half their time at the company's warehouse on South Tarragona Street?

A. Mr. Jones and myself are about the only two that spend fifty percent of their time there.

Q. What about Mr. Gilchrist?

A. He has quite a few customers to call on, and he is out quite a bit of the time.

Q. Then of the six regular employees you would say that only two spend a majority of their time at the warehouse?

A. That's right.

Q. You referred earlier to the extra labor which is occasionally hired. For what purpose is that extra labor hired?

A. Unloading freight when cars come in, and occasionally we get behind and need a man to help in the warehouse to prepare merchandise for shipment.

Q. As best you can, state about how many times per month is such extra labor hired?

A. I would say six or seven times each month.

Q. Is there any other labor employed by the Company, other than the six regular employees you have referred to, and the casual labor?

A. No.

Q. State whether the casual labor usually works a small number or large number of hours in a week.

A. Usually a portion of a day.

Q. State whether or not it is unusual for casual labor to be employed a whole day.

A. It is not unusual to use a man one full day.

Q. Is it unusual for you to use him more than one day, consecutively?

A. It is.

Q. Will you state how much you are paid at the present time?

A. $43.50 per week.

Q. How much were you paid at the time you were hired by the company?

A. $41.25 per week.

Q. Was there any intervening salary, or have you always worked for one of those two amounts?

A. I worked at those amounts at all times.

Q. State whether or not in addition to your salary you are paid a bonus?

A. I receive a monthly bonus.

Q. State how long you have been receiving that bonus?

A. Since the first of June, 1945.

Q. State how that bonus is calculated?

A. I went to work after May 1, 1944, and I was paid fifteen percent of my wages up through May 31, 1945.

Q. I am not sure that is clear. If I may, let me state what I understand by your testimony, and you tell me if it is not correct. That the total amount of your pay was calculated beginning at the time you worked, you

started to work for the company, and through May 31, 1945, and that then beginning June 1, 1945, you were paid a monthly bonus which for the year would amount to fifteen per cent of the total salary you received from July 31, 1944, through May 31, 1945.

A. That's right.

Q. I believe you testified that Mr. Stanton was the manager when you first started to work for the company?

A. That is correct.

Q. During the period he was manager until January 23 of this year, will you state approximately what hours you worked for the company, stating first at what time you came to work in the morning?

A. We started to work at eight o'clock.

Q. On week days, Monday through Friday, state whether or not you took any period in the middle of the day for lunch?

A. I was allowed an hour a day for dinner period.

Q. State on the days from Monday through Friday at what time in the afternoon you would quit work?

A. Our schedule hours were from eight to six. Occasionally I leave a little earlier when things are cleared up.

Q. State whether or not you would sometimes leave about five thirty.

A. That was the earliest hour I would leave, if things were cleared up.

Q. As well as you could estimate it what part of the time during the week from Monday through Friday, and I am just talking about the period when Mr. Stanton was manager, what part of the time would you leave the warehouse at approximately five thirty?

A. Well, I would not know just what percentage of the time, to say sure. Sometimes Mr. Stanton is late coming in the afternoon, and some times I close.

Q. Mr. Robinson, state whether or not a record was kept there of the actual hours you worked for the company while Mr. Stanton was manager?

A. There was no record kept.

Q. Since no record was kept, I will ask you to come as close as you can to stating what portion of the afternoons while Mr. Stanton was manager you would leave about five thirty?

A. Well, we will say fifty percent of the time.

Q. The other fifty per cent of the time you would leave before or after five thirty?

A. I would say around five forty five.

Q. State whether or not that would have been an average of the time for the other fifty percent of the days? State whether five forty five was the time you left for the half of the days, or whether it is not the average of the time you left?

A. I would say an average.

Q. On Saturday during the period we are talking about, I believe you said you came to work at eight o'clock?

A. Yes.

Q. What was your average quitting time on Saturday?

A. One o'clock.

Q. State whether or not about January 23, 1945, when Mr. Gilchrist became manager there was a change in your hours?

A. Well, just a little while after he became manager we started going to work at seven thirty and quitting at five thirty, schedule hours.

Q. During that period of days from Monday through Friday would you take a dinner period?

A. Yes, I would, one hour.

Q. On Saturday during this period what time would you come to work?

A. I would come to work at seven thirty.

Q. What time would you average quitting?

A. It was usually always one o'clock before we got away on Saturday.

Q. As well as you remember, how long did that schedule that you have just testified to under Mr. Gilchrist continue?

A. I would say about half the time he has been manager there, from the time he took over.

Q. If he took over on January 23, 1946, and since today is May 23, 1946, he would have been in there just four months, would he not?

A. Yes, sir.

Q. From what you just told me, they applied to approximately two months?

A. Yes.

Q. During the last two months, beginning March 23, 1946, up to the present, at what time have you come to work from Monday through Friday?

A. Eight to six.

Q. You have come to work at eight. What time did you go home?

A. The schedule was eight to six. I usually left from five thirty to five forty five.

Q. What would it have averaged during those last two months, as close as you can come to it, the time you went home?

A. I would say around five forty-five in the afternoon.

Q. State whether or not you have had a dinner period during the last two months?

A. We did.

Q. During the last two months state what time you go to work on Saturday?

A. Eight.

Q. State what time you went home?

A. One o'clock.

Q. State whether you took a meal period on Saturday?

A. I did not.

Q. Refer now to the whole period of your employment, beginning July 31, 1944, and state whether or not you have missed much time due to sickness.

A. Very little time.

Q. Will you state, as well as you can, about how many days you have missed due to sickness, since you have been employed by the company?

A. Well, I never missed over two days at a time on account of sickness. I don't think I missed over six days all together.

Q. Could you say from the time you started until now you have not missed more than six days?

A. Yes.

Q. State whether or not you have had a vacation since you have been employed there?

A. I have.

Q. State whether you have had more than one?

A. One is all I have had.

Q. When was that?

A. I believe some time after the summer months, last year.

Q. In 1945?

A. Yes.

Q. How long was that vacation?

A. One week.

Q. State whether or not you have missed any time from work at all except for the vacation week you have mentioned and six days of sick leave.

A. On that vacation I worked. I didn't take the vacation. In other words, I was given a vacation, to either take the pay or a vacation, and I worked that time, and got a vacation in that manner.

Q. Do I understand you got paid double?

A. Yes.

Q. So you didn't take any vacation at all?

A. That's right.

Q. I take it the company's records will show the week in which you were paid double?

A. Yes.

Q. Since you have beeen employed there, Mr. Robinson, state whether or not anyone has made any report to the Jacksonville office of the hours you worked?

A. Myself?

A. [Q.] Yes, your hours.

A. No.

Q. Do I understand that no record has been kept by anyone, and no report has been made to Jacksonville, of the hours you worked?

A. That's right.

Q. Going back a minute, Mr. Robinson, you testified earlier about the bonus. If you can, state how much that amounts to a month?

A. I think it is $19.92.

Q. State whether that is net or gross?

A. Net.

Q. You have referred to Mr. Claude Jones. Will you state whether or not he gets a bonus from the company?

A. He does.

Q. When Mr. Gilchrist is out of the office, meaning the warehouse, who is in charge?

A. I am left in charge when he leaves.

Q. When you are there in his absence, how many other employees will usually be there?

A. Usually one.

Q. Who is that?

A. The shipping clerk, C. J. Jones.

Q. You have referred to the truck driver, Foller, state whether he has been employed long by the company?

A. He has been employed by the company since Mr. Gilchrist has been manager, I will say around two months.

Q. Before him did the company have another truck driver?

A. They did.

Q. Do you recall his name?

A. Henry Cantrell, colored.

Q. State whether or not Henry was working there when you first started working there?

A. He was.

Q. State whether or not he was employed there continuously until the time he left.

A. He was.

Q. State whether or not you have had much occasion since you have been there to give instructions or directions to either of these truck drivers?

A. I have not had much occasion to do so.

Q. State whether or not since you have been employed by the company you have ever hired or fired any regular employees?

A. I have no such authority whatsoever.

Q. Do I understand no one has ever given you any authority in connection with hiring or firing regular employees?

A. They have not.

Q. State whether or not you were ever consulted with respect to the hiring or firing of any regular employees?

A. There are lots of people that come there for jobs when we have an advertisement in the paper for shipping clerk, and they come in and I refer them to Mr. Gil-

christ. If he was not there I told them to come back and see him about the job.

Q. State whether when Mr. Gilchrist is out of the warehouse you ever supervise anyone?

A. When Mr. Gilchrist is there, I do not.

Q. When Mr. Stanton was manager, and during the period you were employed by the company, what part of his time, approximately, did he spend at the warehouse?

A. Well, Mr. Stanton was out quite a bit, also, I don't know whether I could give you an estimate of the amount of time he spent there or not.

Q. Will you state whether, in your opinion, while Mr. Stanton was manager, and while you were employed by the company, he spent more of his working time at the warehouse or away from the warehouse?

Mr. Kurz:

Object to any question which calls for the opinion of the witness.

Q. I will rephrase that question. Will you state whether during the time Mr. Stanton was employed as manager, and while you were with the company, Mr. Stanton spent more of his time during working hours at the warehouse or away from the warehouse?

A. My opinion is that he spent more of his time away, especially so in the last few months.

Q. As well as you can estimate it, taking into account the whole time that he was manager, and while you were employed there, what portion of his total working hours was spent at the warehouse?

A. I would say forty or forty five percent of his time.

Q. The remainder was spent how?

A. The remainder was spent calling on customers, etc.

Q. State in what place in the establishment on South Tarragano Street you are employed, in what part of the premises you are employed.

A. I am employed in the main office.

Q. State whether anyone else is employed in the main office.

A. Mr. Gilchrist has his business in there.

Q. Will you state the approximate dimensions of that office?

A. Well, the room is about twelve by fourteen, the main office.

Q. Meaning twelve feet by fourteen feet?

A. Yes.

Q. In addition to the office what else is there at the establishment?

A. Separated from the office is the warehouse, which houses all the merchandise.

Q. Who regularly works in the warehouse?

A. Mr. Jones, the shipping clerk, works there regular. Of course the truck driver is back there assisting him when he is not out on a delivery.

Q. I believe you testified that the truck driver spends more than half of his time out of the establishment?

A. Yes.

Q. Is there anything else in the establishment except the warehouse portion of the establishment and the office? Anything except the office and warehouse?

A. No, just those two divisions.

Q. What is there right out in front of the establishment on the street there? Is there a railroad there?

A. Yes, there is a railroad there.

Q. How close, approximately, is that to the front of the establishment?

A. Twelve or fifteen feet.

Q. State whether or not goods are unloaded there that come to the establishment by railroad?

A. They are.

Q. You have testified some time ago as to your duties at the establishment, in some detail. Would you please state what you consider your principal job?

Mr. Kurz:

We object to that, as calling for a conclusion of the witness.

A. My principal job is handling all the cash, posting all debits and credits in accounts receivable, handling bad debt accounts, and receiving mail and sending mail out, the majority of the time taken in handling accounts.

Q. State whether or not you were employed by the company at the time Claude Jones came to work?

A. I was.

Q. Back from the beginning of his employment how was Jones paid?

A. He was paid the first few weeks on the extra labor pay roll.

Q. State whether the company's records will state how long a period he was paid on the extra labor pay roll?

A. They will actually show.

Q. After he was taken off the extra labor pay roll, how was Jones paid?

A. He was paid on the regular pay roll. He had to sign the pay roll and receive his money.

Q. Since Jones was taken off the extra pay roll, state whether or not any record has been kept of the hours he works.

A. There has none been kept.

Q. Who employed you to work for the company?

A. There was an ad in the paper. My job was open. I went up there and some time before I took the job, I spoke to Mr. Gilchrist, and Mr. Gilchrist informed me we had to go to Jacksonville. Later on I came back and

he said we could make arrangements; I didn't have to go to Jacksonville. The day I went to work I had a telephone conversation with Mr. M. R. McGehee. He is the man that put me to work.

Q. When you were employed who told you what you would be paid?

A. The cashier there at that time was from Jacksonville, temporarily, Mr. Hammett.

Q. How do you spell that, please?

A. H-a-m-m-e-t-t.

Q. Did he tell you something about how you would be paid?

A. Yes, he did.

Q. What did he tell you?

A. At the end of the week he put me on an extra labor pay roll there, as we do other extra labor workers.

Q. How long were you on that extra labor pay roll?

A. Some six or seven weeks.

Q. At the end of that time, or before the end of that time did you have any discussion with anyone as to how you would be paid?

A. Nothing other than the way that I went to work.

Q. There must have been some discussion as to how you would be paid. Can you recall any discussion, anything that was said about what you would get when you were taken offf the extra labor pay roll?

A. Yes, they told me I would go on the regular pay roll at $41.25 weekly.

Q. Do you recall who told you that?

A. The cashier, Mr. Gilchrist, was the last man that was with me, and he informed me that was the way I would be paid.

Q. Since the time you were finally taken off the extra labor pay roll, state whether you have been told that you were employed on an hourly rate.

A. I have never been told that.

Cross Examination.

By Mr. Kurz:

Q. Mr. Robinson, you made some estimates here on your direct examination about the percentage of time that you are required to do certain particular parts of your duties. Have you ever kept any records of those times?

A. No, sir, my job, as I understood it, was as I have already stated, and naturally I kept no record of any time.

Q. Then when you make these estimates they are just guesses, are they not?

A. That's right.

Q. Could you say, for instance, what part of your time was spent in waiting on customers, and making sales over the counter, during any particular week?

A. No, I could not. I just estimated then percent, for this reason: At times it becomes necessary, also I will have three or four hours a day that I will have it by myself, Mr. Gilchrist is calling on customers. Some days it varies, of course.

Q. When Mr. Gilchrist is out of the office you are in charge of the office?

A. Yes.

Q. Who employs extra labor?

A. If there is any extra labor hired, Mr. Jones would go out and get them and bring them in. I have never been authorized to put any men to work.

Q. That is Mr. Jones' job, to get the extra labor?

A. He goes out and gets them and Mr. Gilchrist has to tell him whether the men can work or not.

Q. You say you were employed by the company since July 31, 1944?

A. That's right.

Q. Since that time how many different shipping clerks have there been in the company?

A. They have come and gone. The first man that came on after I was there was a man named A. D. Wall. I believe he came to work in August and left the company some time in December, drafted into the Army. A few days later he hired a man by the name of Culsby, who worked just a few weeks. Then he hired a man by the name of Garrstarphen. Then he hired a man by the name of Campbell. Then he hired one by the name of James Beebe. To the best of my recollection Mr. Jones relieved Beebe.

Q. Mr. Shelton asked you about your duties in approving credits. Does that involve the exercise of judgment as to whom credit should be given to?

A. I have considered it so. I have never been instructed otherwise. I understood it was to O. K. or disapprove anything.

Q. Who is held responsible for the extension of credits?

A. All matters that come from Jacksonville are taken up with me for any errors that are made. Therefore, it must be my responsibility.

Q. I understood you to say that while the manager is out of the office you are in charge of the office of the Pensacola branch?

A. That's right.

Q. You are there by yourself during that time?

A. Yes.

Q. I also understand that the manager spends a very considerable portion of his time outside of the office. Is that correct?

A. That's right, ordinarily. Since Mr. Gilchrist has been manager there are a lot of things to be straightened up and he has not spent quite as much time out as ordinarily.

Q. Ordinarily then you would say that the manager spends most of his time outside of the office?

A. That would be his routine ordinarily, calling on customers.

Q. When Mr. Gilchrist first became manager the office hours were from seven thirty to five thirty, the schedule hours?

A. When he became manager the schedule hours were from eight to six, when he took over.

Q. I understood you to say that when Mr. Gilchrist first became manager he inaugurated the system of seven thirty to five thirty.

A. Some few days after.

Q. That continued about two months?

A. I would say approximately two months.

Q. Do you work on those schedule hours?

A. No. I didn't work right to the "T", right to the minute, rather. I live out in the country some six or seven miles, and devote some of my time to church work, and late in the afternoon when I was caught up down here, it might be about five thirty Mr. Gilchrist would let me go.

Q. If your work was finished you could leave?

A. That's right.

Q. I believe that you stated that your bonus, in addition to your salary of $43.50 per week, amounts to $19.92 per month net?

A. Net, based on the time I went to work on the 31st of July, 1944, up to May 31st, 1945.

Q. What do you mean by "net"? You mean after deduction of Social Security, etc.?

A. I draw a check for $19.92 or $19.93. I could be a little wrong, but right about that.

Q. By "net" you mean after deductions?

A. Yes.

Q. Do you know how much the gross amounts to?

A. No, sir, I do not.

Q. I believe you stated that the bonus is calculated on the basis of fifteen per cent of your total salary?

A. Yes.

Q. What is your official title?

A. Cashier.

Q. And office manager?

A. Cashier.

Q. I believe you have already testified that you handle all credits?

A. Yes, that goes in with the duties of cashier.

Q. Who is responsible for the collection of accounts?

A. The collection of accounts, all collections are made by the salesmen when they call on their customers. Where a man refuses to pay a bill, we have to contact the Jacksonville office, in a case like that, where a suit has to be entered. If a man—

Q. The bad—

Mr. Shelton:

I am going to insist that you let him finish his answer.

Mr. Kurz:

Let me handle my part, and you can handle your part.

Q. The bad debts are handled by whom, before suit?

A. Before suit?

Q. Yes.

A. I go out and make no collections from anyone. The salesmen make the collections. Of course when the collections are not made, then it is my duty to make procedure from there.

Q. If the accounts are in arrears, who would tell the salesmen about checking up on them and trying to collect them in?

A. I have to check up on that.

Q. Whose responsibility is it to see that the accounts are kept up to date?

A. They handle all that directly with me. I make reports on all that.

Q. You make reports to Jacksonville?

A. Yes.

Q. Who is responsible for the collection of accounts in this office?

A. You will have to explain yourself.

Mr. Kurz:

That's all.

Re-Direct Examination.

By Mr. Shelton:

Q. Mr. Robinson, when Mr. Stanton was manager, while you were employed there, what was Mr. Stanton's sales area? In what area did he make sales?

A. He usually carried the larger accounts. By that I mean jobber's accounts, etc. The best I could get from it when Mr. Waters came there Mr. Stanton gave him a certain amount of customers to call on, and Mr. Stanton kept a certain amount to call on. It has been handled in that manner ever since.

Q. State whether or not the greater part of Mr. Stanton's sales were made inside Pensacola or outside Pensacola?

A. In Pensacola.

Q. State whether or not when Mr. Stanton was selling in Pensacola he would come to the establishment every day.

A. He did.

Q. When Mr. Gilchrist became manager what sales area did he take?

A. He took over the same area that Mr. Stanton had.

Q. I judge from what you say that like Mr. Stanton the majority of his sales are made in Pensacola?

A. That's right.

Q. When Mr. Gilchrist is selling in Pensacola does he come to the establishment every day?

A. He does.

Q. State whether or not you have a bookkeeping machine in the warehouse.

A. We do.

Q. Who operates that bookkeeping machine?

A. I do.

Q. As well as you can estimate it, state what part of your time, in an ordinary day, will be spent in using that bookkeeping machine.

A. I would say from an hour to an hour and a half.

Q. Does that apply to Saturday or not?

A. It does not apply to Saturday.

Q. About what part of your Saturday time would be spent operating the bookkeeping machine?

A. We usually don't use it on Saturdays.

Q. What you first stated would apply from Monday through Friday?

A. Yes.

Q. I don't know whether you testified on direct or not,—do you handle the bank deposits here?

A. I do.

Re-Cross Examination.

By Mr. Kurz:

Q. If I understand correctly then, all matters of collections, bank deposits, and financial matters of that kind, in connection with this branch; are handled by you? All the money is put in the bank,—all the collections are not made by you,—all money that comes in is deposited, all bank deposits are made by you?

A. Yes.

Q. All the records pertaining to cash received and all disbursements are kept by you?

A. That's correct.

Re-Direct Examination.

By Mr. Shelton:

Q. What is your understanding, Mr. Robinson, about your bonus in this regard: If you should quit in the middle of the year, would you get the monthly bonus payments for the rest of the months in that year or not? In other words, let's say you quit in the middle of the company's fiscal year, after you had obtained and been paid six bonus payments, is it your understanding you would be paid the other six bonus payments for that year or not?

A. I would expect it.

Q. Do you know what has happened in past cases when any employees getting bonuses quit in the middle of the year?

A. No, sir, I have not been informed as to that, directly.

Mr. Kurz:

That's all.

The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto, by their counsel.

Thereupon the witness was excused.

Stipulation: It is stipulated and agreed between counsel for the respective parties that the stipulation entered into as to the coverage under the Fair Labor Standards Act of S. D. Robinson shall apply also to Claude Jones and shall apply to J. O. Gilchrist during the period of his employment as cashier for the Pensacola Paper Company.

J. O. GILCHRIST, a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

940 Direct Examination.

By Mr. Shelton:

Q. State your full name?

A. Jesse Ola Gilchrist.

Q. Mr. Robinson has testified that you are now manager of the Pensacola Paper Company. Is that correct?

A. Yes.

Q. Where do you live?

A. 1315 East Lee Street, Pensacola.

Q. State whether at an earlier period you were employed by the Pensacola Paper Company as cashier?

A. You mean the dates?

Q. Well, I will get to that. First, were you employed as cashier?

A. Yes.

Q. State the approximate time you began work as cashier for the company?

A. For the Pensacola Paper Company I began March 15, 1943.

Q. When was the last time that you were employed as cashier, the last date?

A. I can't say. I can't recall.

Q. Can you remember the month?

A. I was on the pay roll as cashier up through, I think it is September 23, 1944.

Q. State whether there was a period in the summer of 1944 when you were away from the plant because of your health?

A. Yes.

Q. Can you remember the month that you stopped active work as cashier for the company?

A. I think it was either July or August. I could not say.

Q. Of 1944?

A. Yes.

Q. The remaining questions I will ask you will relate to the period when you were actually employed as cashier, and not to the period when you were off because of your health. In other words, from March 15, 1943, to July or August, 1944, as the case may be. When you were so employed, beginning in March, 1943, how much were you paid a week?

A. $40.00.

Q. Did you later get a raise while you were working as Cashier?

A. Yes, sir.

Q. What was the raise to?

A. $41.25, I believe. That was restroactive.

Q. Did you get only the one raise, as cashier?

A. Yes, sir.

Q. When you were employed as cashier, who employed you?

A. Mr. M. R. McGehee.

Q. What did he tell you about how you would be paid?

A. He explained the salary, that is, my weekly salary, and also the bonus that came in after a certain period of employment there.

Q. If you remember, when did you start receiving the bonus?

A. In June, 1943.

Q. At the time you were employed by Mr. McGehee, state whether he said anything about you being hired on an hourly rate?

A. No. Well, he did say the hours that I worked would not be near the hours I had been accustomed to working.

Q. He told you approximately what your schedule of hours would be?

A. From eight to six, yes, sir.

Q. Did he tell you that you would have an hour for dinner?

A. Yes.

Q. Did he tell you what the hours on Saturday would be?

A. Yes, eight to one.

Q. Without any meal time on Saturday?

A. Well, that was up to me as to whether I wanted to take off time.

Q. Did you take a meal period on Saturday while you were cashier?

A. It depended on whether I was up with my work. If I was up with my work I got off at one, and if I was not I would take an hour for lunch and come back.

Q. When you quit at one did you have a meal period on Saturday?

A. No.

Q. When you took a meal period on Saturday that was because you were coming back in the afternoon to work?

A. Yes.

Q. As well as you can recall, when you were cashier what part of the time did you come back and work Saturday afternoon?

A. If the end of the month came close to a week end I usually came back Saturday afternoon.

Q. Can you estimate how many Saturdays a month you would come back?

A. Not more than one.

Q. When you came back about how long would you work on Saturday?

A. Probably four hours. I usually left around five or five thirty.

Q. How long would that make your day on Saturday?

A. It would make it just about the same as any other week day, which would be from about eight to six. It would not be quite as long.

Q. Since you say you usually left about five thirty, do I understand it would be about half an hour shorter?

A. Yes.

Q. Your other Saturdays would be about five hours?

A. Yes.

Q. Your week days would be eight to six, and you have time out for dinner?

A. Yes.

Q. How long would that be?

A. One hour.

Q. When you first started to work as extra for the company was there any situation which required you to work beyond your regular hours?

A. Yes, sir, when I first started to work for the company there was.

Q. During the first two weeks you were employed as cashier about how many hours did you work a week?

A. Well, I spent more or less a great deal of time at the office, because my family was not here, and I didn't have anything to do, and I was trying to get accustomed to the work as quick as possible.

Q. That first week can you state approximately how many hours you worked?

A. I could not say off-hand. Sometimes I would leave there at seven and sometimes it would be nine. There were times when I stayed as late as ten.

Q. The first week did you ever leave before seven?

A. Yes.

Q. How many times?

A. I don't know.

Q. The second week about how many hours did you work?

A. About the same as the first week.

Q. You cannot state approximately how many hours you worked in each of those two weeks?

A. No, sir, I would be afraid to say.

Q. State whether or not it would have been over fifty.

A. Yes, sir.

Q. State whether it would have been over sixty?

A. I don't believe so.

Q. State whether it would have been under sixty?

A. Yes, sir, I think so.

Q. About where between fifty and sixty do you think it would be?

A. We will strike a happy medium at fifty five. That is a rough estimate.

Q. For the first two weeks?

A. Yes, sir.

Q. State whether or not after that you started on the permanent schedule you have told us about of hours from eight to six on week days, or did you continue to work beyond six? Beginning the third week when would you go home at night?

A. Beginning the third week I think that was along about the time we had the auditor over here, and we were getting some merchandise straightened out, and I spent quite a bit of time down to the office.

Q. About how many hours do you think you worked that third week?

A. The third week I would say I worked around eight hours. Just roughly estimating. I would not say it would be more or less.

Q. How about the fourth week?

A. I think the fourth week was cut down right smart.

Q. About how many hours?

A. Possibly sixty.

Q. How about the fifth week?

A. The fifth week the auditor came back and I put in about the same number of hours I did the third week.

Q. Did you testify that was about eighty?

A. I think so.

Q. The next week would have been the sixth week?

A. I think the next week would be the seventh.

Q. About how long did you work the seventh week?

A. Around fifty hours, I suppose.

Q. State whether or not from then on you would work about the schedule hours you have told us about, of eight to six?

A. Well, yes, around eight to six, yes, sir.

Q. State whether or not for work days that schedule continued as long as you were cashier and on active duty?

A. Yes, sir.

Q. Will you please state, Mr. Gilchrist, what your duties were as cashier?

A. Yes, sir. I handled all collections, did all the letter writing, handled all credits, handled the pay rolls and paid all petty cash bills, and I received all collections, I believe I mentioned that.

Q. State whether you operated the bookkeeping machine?

A. Yes.

Q. About how many hours a day from Monday through Friday you would operate the bookkeeping machine?

A. About thirty minutes.

Q. State whether you kept any pay roll records?

A. Yes.

Q. What types of pay roll records, or on what type of employees?

A. Well, on every employee in the bunch, on the same pay roll.

Q. Do I understand that it was your duty to keep those records?

A. Yes, sir.

Q. State whether or not it was part of your duty as cashier to pay freight charges when freight was sent collect?

A. Yes, sir.

Q. State whether or not as cashier you made sales over the counter to persons who came into the establishment?

A. Yes, sir.

Q. As well as you can estimate it, what part of your time as cashier would be spent in making such sales over the counter?

A. Well, along about then I would say about one-fifth or one-fourth.

Q. When you were cashier who prepared the statements that showed how much customers owed the company?

A. I did.

Q. Who handled the correspondence with Jacksonville?

A. I handled some and Mr. Stanton handled some.

Q. What types of correspondence did you handle?

A. Pertaining to credits, mostly.

Q. State whether or not you corresponded with Jacksonville with respect to pay roll matters.

A. Yes, sir.

Q. State whether you corresponded with Jacksonville with respect to merchandise received?

A. Yes, sir.

Q. State whether or not there were some other miscellaneous types of correspondence?

A. Yes, sir.

Q. State whether at that time there was a system of files in the office?

A. Yes, sir.

Q. Whose duty was it to do the filing?

A. It was my duty.

Q. What types of paper did you file?

A. Correspondence, freight bills, and invoices.

Q. Please state whether or not you got credit reports?

A. Yes, sir.

Q. State whether they were filed?

A. Yes, sir.

Q. State whether or not bills of lading were filed?

A. Yes, sir.

Q. State whether that would include truck bills of lading as well as railroad?

A. Yes, sir.

Q. State whether express receipts were filed?

A. Yes, sir.

Q. State whether or not it was part of your duties as cashier to pass on applications for credit?

A. Yes, sir.

Cross Examination.

By Mr. Kurz:

Q. Mr. Gilchrist, how long a time per day did you spend in filing these various documents you have stated about?

A. Well, it didn't take but just a very few minutes during the day.

Q. Who was responsible for the financial transactions in the Pensacola branch while you were cashier?

A. What kind?

Q. I mean by that, who made the bank deposits?

A. I did.

Q. Who looked after collections?

A. I did.

Q. Who paid bills?

A. Petty cash bills. I paid those.

Q. I believe you stated you passed on applications for credit?

A. Yes.

Q. In doing that did you have to take into consideration the type of business that the applicant did, and what his credit rating was?

A. Yes, sir, if we didn't have time to get a credit report on the customer in question I would recommend to the salesman that we ship the order C. O. D. until we did have time to get such a report.

Q. That was in your charge, was it not?

A. Yes, sir.

Q. If collections wer not promptly made, whose duty was it to check up on that and direct the salesmen to make the collections?

A. It was my duty.

Q. On all of those financial transactions you have testified about, credits, and deposits and payment of bills, etc., to whom did you report? That is, in the company.

A. You mean on collections?

Q. On all of those things, collections?

A. On collections I reported to the General Office Credit Manager.

Q. In Jacksonville?

A. Yes, sir.

Q. Did the general office in Jacksonville inform you that you were responsible for credits?

A. That was the understanding here when I took the position.

Q. That was your responsibility?

A. Yes, sir.

Q. While you were cashier was there any other employee regularly employed in the office, except Mr. Stanton, in the office part of the business?

A. When I first came to work for the Pensacola Paper Company there was a girl employed under me. At least, she was there when I got there, and she worked directly under me until she left the company. We never did replace her.

Q. While you were cashier who handled the employment of extra labor?

A. You mean paying extra labor?

Q. No, who employed extra labor?

A. Mr. Stanton.

Q. You paid the extra labor?

A. Yes, sir.

Q. Did it ever happen that any freight shipments arrived while Mr. Stanton was out, that had to be handled?

A. Yes, and in that case it fell on my shoulders.

Q. You employed the extra labor?

A. Yes.

Q. Is that the system that is followed at the present time?

A. Yes, sir.

Q. In other words, when you are out Mr. Robinson has that duty?

A. Yes, he has authority to do it, yes, sir.

Q. You testified that your schedule of hours was from eight to six during the week, from Monday through Friday?

A. Yes, sir.

Q. Did you always work those hours, or did you sometimes leave sooner than that?

A. No, sir, I always worked from eight to six.

Q. On Saturdays you say about one Saturday a month you had to work during the afternoon?

A. Yes, provided the Saturday was close to the end of the month. If it was not close to the end of the month I would try to work hard during the week, without having to put in any overtime.

Re-Direct Examination.

By Mr. Shelton:

Q. What was the name of this girl who was in the office when you were first cashier?

A. Helen Loper, at that time. Since that time she has changed her name.

Q. She will appear on the pay rolls of the company as Helen Loper?

A. Yes, sir.

Q. Since you have been manager how many times a month on the average has it been necessary to employ casual labor to help unload freight cars?

A. I would say on an average of two times a month.

Re-Cross Examination.

By Mr. Kurz:

Q. How many truck drivers were employed by the company while you were cashier?

A. When I first came, there were two, I think.

Q. Who handled the extra labor at that time in the warehouse?

A. You mean who paid them off?

Q. No, who employed them?

A. Mr. Stanton.

Q. Except on those occasions when Mr. Stanton was away, and you employed them?

A. Yes, sir. It was left up to me.

Q. Does Mr Jones now employ the extra labor down there, do you know?

A. Yes, sir. When I am away he has authority to employ them provided Mr. Robinson is not right at hand.

Q. If Mr. Robinson is at hand, who has authority to employ extra labor then?

A. Mr. Jones goes out and gets the extra labor. Most of the times he will go down to the docks where they are hanging around and bring them in, and he will take it up with Mr. Robinsin, if Mr. Robinson is available, provided I am not there. If I am there he takes it up with me.

The reading and signing of the deposition by the witness was waived by the witness and by the parties hereto by their counsel.

Thereupon the witness was excused.

CLAUDE J. JONES, a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

952 Direct Examination.

By Mr. Shelton:

Q. Please state your full name?

A. Claude J. Jones.

Q. Are you now employed by the Pensacola Paper Company?

A. Yes, sir

Q. On what date did you begin working for the company?

A. April 13, 1945.

Q. Have you worked there continuously since that time?

A. Yes, sir.

Q. During that whole period have your duties been about the same?

A. Yes, sir.

Q. Will you please state, Mr. Jones, what your duties are? What do you do for the company?

A. Well, the first thing every morning we get out the city stuff and put it on the floor, and I help load it on the truck, and check it with the invoices, and get the city stuff out. I get the country stuff, and where it is necessary I book them and bill them out.

Q. State whether you have any duties with respect to goods coming in to the Pensacola Company warehouse?

A. Incoming goods, I check them against the invoices, and sign for them. Check them against the bill of lading.

Q. When goods come in by truck or express, who unloads them?

A. The driver of the truck, the drivers of the express wagon.

Q. Where do they place the goods?

A. Generally in the side door, on the floor.

Q. By that you mean the side door of the warehouse?

A. Yes, sir.

Q. Who takes the goods from there?

A. And places them in stock?

Q. Yes.

A. The truck driver and myself.

Q. State whether or not you have any work to do in connection with placing them where they go.

A. I do, yes.

Q. What do you do in that connection?

A. I take the truck and haul them back there, with the help of the truck driver, hand truck.

Q. Are you referring to one of those little two wheel hand trucks?

A. Yes, that and four-wheel dolly.

Q. You chiefly use those two to get the goods from the warehouse?

A. If there is a quite big order we generally use the dolly. If it is just a few pieces we use the hand truck.

Q. Are there any small things which you carry by hand, without using either?

A. Once in a while, especially by express, if there are two or three small packages.

Q. You testified, I believe, that you checked those incoming goods against the invoices?

A. Yes, sir, against the bill of lading.

Q. In the case of express shipments what are the documents called that you check the goods against?

A. The bill for the express goods?

A.[Q.] Yes.

Q.[A.] I think it is a receipt, isn't it?

Q. Anyway, you check the goods against the paper that shows what is contained in the shipment?

A. Yes, it is an express receipt.

Q. State whether or not sometimes there are shortages in the goods received.

A. If there is a shortage I mark it on the bill of lading.

Q. When you are through with the bill of lading or express receipt what happens to it?

A. I put it on Mr. Gilchrist's desk, or hand it to him if he is there.

Q. Who cleans up in the warehouse?

A. The truck driver and myself.

Q. With respect to outgoing shipments which are going from the warehouse to your customers, will you describe how they are handled?

A. Well, bags and quite a few items that have to be packed in cartons, butcher paper, and substantial cartons, are not packed, they are just billed out.

Q. Where the goods have to be packed in cartons or other containers, who does that?

A. I do, and the truck driver helps me, if he is not on a run.

Q. Who does most of it?

A. I do.

Q. In connection with goods going to your customers, do you prepare any paper to go along with the goods?

A. Nothing any more than the bill of lading. I bill it out.

Q. When you are sending packages or shipments of goods out to a customer, do I understand that there will be a piece of paper go along with the shipment?

A. There will be a piece of paper mailed to them. Copy of the invoice and bill of lading.

Q. In what ways, by what means of transportation, do you ship goods to your customers?

A. We ship some by express and some by railway freight, and some by truck line freight.

Q. State whether or not you ship by parcel post?

A. A few small items, we do.

Q. Now with respect to those four types of goods moving in those four ways, who handles them when they are being prepared for shipment from the plant?

A. You mean who loads them?

Q. Yes, who gets the orders ready and puts them on the truck or in the freight car, or wherever they are going?

A. Most of them, some truck lines, once in a while will come in and pick them up themselves, but we deliver them to the freight lines mostly ourselves. I check them on the truck with the bill of lading.

Q. Besides you, how many people are employed in the warehouse? Who else is employed in the warehouse, besides you?

A. Nobody except the truck driver and me, if he would be included in the warehouse.

Q. Does the truck driver spend more time in or out of the warehouse?

A. He spends a good deal more out. He makes two deliveries most every day.

Q. State whether you have occasion to hire casual labor down there, in connection with the warehouse work?

A. In unloading full cars, and some times parts of cars, we do.

Q. About how many times a month do you have to employ such casual labor?

A. I have not employed any but twice in the last two months. But heretofore we employed some more regular than that.

Q. Before the last two months about how many times a month would you employ casual labor down there?

A. I would say three or four times a month.

Q. When you employ casual labor, how many days would you employ them for?

A. Not over a day at a time. Generally about half a day.

Q. In your job in the warehouse, what part of your time is spent telling other employees what to do?

A. I would not say any of it, spent in telling anybody what to do.

Q. State who hires the casual labor down there, when you need casual labor?

A. I presume Mr. Gilchrist hires it.

Q. Mr. Jones, when you first started to work down there, who hired you?

A. I answered an ad in the paper, and Mr. Stanton hired me.

Q. That was Mr. J. E. Stanton, former manager?

A. Yes.

Q. How did he tell you that you would be paid?

A. Weekly.

Q. Did he tell you how much you would get a week?

A. Yes, sir.

Q. What did he tell you?

A. $32.50.

Q. Since you started to work there have you had any raises?

A. Yes.

Q. To how much?

A. $35.00.

Q. Have you had any other raises?

A. No, sir.

Q. During the period when Mr. Stanton was manager down there, when would you come to work in the morning?

A. Eight o'clock.

Q. Regardless of the day of the week? Did you come at different times any day, or always at eight?

A. We went to work at eight in the morning.

Q. On the week days, from Monday through Friday, would you have any time out for dinnner?

A. Yes.

Q. How much?

A. One hour.

Q. Did you have any regular time for dinner?

A. Yes.

Q. When was that?

A. Twelve o'clock.

Q. Beginning at twelve?

A. Yes.

Q. When did you leave at night?

A. Anywhere from five thirty to six.

Q. When did you leave on Saturday?

A. On an average of about one o'clock, I would say.

Q. Since you began work at eight on Saturday, that would mean about five hours on Saturday, would it not?

A. Yes, sir.

Q. After Mr. Gilchrist came to be manager at the plant, or was promised to be manager, state whether there was any change made in the working schedule?

A. Yes, sir, there was.

Q. What happened shortly after he came in?

A. We went to work at seven thirty and knocked off at five thirty.

Q. What lunch hour did you have?

A. The same as before, twelve to one.

Q. What hours did you work on Saturday?

A. Until one.

Q. Has that schedule continued up to the present time?

A. The one o'clock schedule?

Q. No, sir, your coming to work at seven thirty? What time do you come to work now?

A. It has been changed, we come to work at eight and work until six.

Q. About how long have you been doing that?

A. I would say three or four weeks, something like that.

Q. How long do you now have for dinner?

A. One hour.

Q. What hours do you work on Saturday now?

A. If there is not anything particular to do, we knock off at one.

Q. Since you have been down there, have you lost any time on account of sickness?

A. No, sir.

Q. State whether or not any record is kept of the hours you work?

A. I don't keep any record of them.

Q. To your knowledge does anyone else keep a record?

A. No, sir.

Q. To whom are you responsible? Who supervises your work, Mr. Jones?

A. I would say Mr. Gilchrist.

Q. Before Mr. Gilchrist was manager, who supervised your work?

A. Mr. Stanton.

Q. Do you remember a colored boy named Henry Cantreel, who worked for the company?

A. Yes.

Q. In what capacity did he work?

A. Truck driver.

Q. When he was the truck driver, will you state to what extent you gave him instructions as to what to do?

A. I didn't tell him to do anything, unless it was absolutely necessary.

Q. Have you ever hired or fired any of the regular employees?

A. No, sir.

Q. Have you ever recommended that any of the regular employees be hired or fired?

A. No, sir.

Q. Will you state what part of your time is spent in work in connection with receiving incoming shipments and handling outgoing shipments to the company's customers, what part of your total working time?

A. Ask that again.

Q. Of your total time you work down there, what proportion or what part is spent in handling incoming goods, and in handling goods that are going out to the company's customers?

A. Would that include preparing the goods to go out?

Q. Yes, both incoming and outgoing, both the handling of goods and paper work.

A. Practically all my times.

Cross Examination.

By Mr. Kurz:

Q. Mr. Jones, is it not a fact that you usually go out and employ the extra labor?

A. What is that?

Q. Is it not a fact that you usually pick the extra labor when you need it?

A. Not every time. Sometimes I am sent out to hunt extra labor, but I don't do that every time.

Q. But you do that on occasion?

A. Yes.

Q. How often would you say you do it, in the course of a month?

A. I would say in the past, once or twice a month.

Q. How many times would you have occasion to employ extra labor in the course of a month?

A. Two and three, and probably sometimes four times a month, and in the last two months we employed extra labor twice.

Q. Who employed the extra labor on those two occasions?

A. I went down to the park in April and picked up a couple of men and brought them to the office, but I do not consider that I employed them. I brought them to the office, and they were employed at the office. On the last occasion Mr. Gilchrist called the Employment Office and got them, last Monday morning.

Q. You are the one that went out and picked them and brought them in?

A. That is, the last two?

Q. Yes.

A. No, sir, Mr. Gilchrist called the Employment Office, and they sent them around.

Q. When you go out to pick the extra labor, you do that? You pick the men you want to have there? Is that right?

A. Well, I will pick up men, anyone I can find. Sometimes they are hard to find, and you will have to look around quite a little while before you find any that is ideal.

Q. It is your job, in this instance, to go ahead and find the extra labor and hire them?

A. I would not say I hire them. If they tell me to go out and pick extra labor, I go out and bring them in.

Q. Were they employed by the office when you bring them in?

A. I would say they were.

Q. Who is in the warehouse besides yourself?

A. No one in there regular. The truck driver is in there some of the time.

Q. You testified that the truck drivers unload freight into the warehouse. Who tells them where to put it?

A. Well, he generally knows where it goes. It is not necessary to tell him. In other words, I am generally there working with him, and we both know where we want it placed.

Q. Suppose that you want it placed in one particular place, do you tell the truck driver where to put it?

A. Yes, if there is something I want placed in a particular place and he was moving it, I would tell him where to put it.

Q. If you want the truck driver to do some work there, do you tell the truck driver what to do?

A. On some occasions.

Q. On what occasions would you tell him that?

A. When he was not busy, and I had something I wanted done he didn't know about, probably.

Q. Any time you want the truck driver to do something, you tell him what to do?

A Any time I wanted him to do something I tell him what to do?

Q. Yes, that's right.

A. Yes, sir.

Q. What is the extra labor used for?

A Unloading cars.

Q. Who tells them what to do?

A. I do.

Q. Do you always stay there until six o'clock in the evening on week days, except Saturday?

A. Since we changed our time coming to work, eight to six, we stay there until approximately six o'clock.

Q. Do you ever leave before six?

A. Well, in some occasions we may leave two or three or four or five minutes before six.

Q. Do you ever leave at five thirty?

A. No, sir, I have not, since we changed our time.

Q. Is the warehouse a separate part of this Pensacola Paper Company branch?

Mr. Shelton:

Object to that on the ground it calls for a conclusion of the witness.

Q. Is the warehouse separated from the rest of the building in any way?

A. It is separated from the office.

Q. How is that, structural wall or partition?

A. Well, a door opening through the wall from the office to the warehouse.

Q. You are in charge of the warehouse part of that branch. Is that right?

A. I would not say I was all together in charge.

Q. Who directs you except the manager, in a very general way?

A. Well, if Mr. Robinson wants something he will call on me. If a customer comes in and he wants some butcher paper, he will holler back to me and tell me to get either two or four rolls of butcher paper, fifteen inch or eighteen inch.

Q. Mr. Robinson does that?

A. Yes.

Re-Direct Examination.

By Mr. Shelton:

Q. You get a bonus, don't you?

A. Yes, sir.

Q. Is it your understanding that that bonus is calculated acording to the same system it is for other employees, based on length of service and earnings in the previous year?

A. Well, I suppose so, yes, sir

Q. Mr. Jones, how long has it been since this boy Henry Cantrell left down there?

A. I would not know definitely, but I would say some time in February.

Q. Of 1946?

A. Yes, sir.

Q. Most of the time you have been down there he was the truck driver?

A. Yes.

Q. You testified on direct that you never gave him instructions unless you had to?

A. That's right, unless I deem it real necessary.

Re-Cross Examination.

By Mr. Kurz:

Q. Suppose any time that Henry Cantrell or any other truck driver did something you didn't want him to do, would you tell him to stop it?

A. Well, it is according to what it would have been. I would not say yes, and I would not say no. He might have had orders from Mr. Stanton or some of the rest of them to do it.

Q. Did you consider that you had a right to direct the truck driver in his duties down there in the warehouse?

A. As much so as the manager gave me authority to.

Q. Did the manager ever interfere with you in directing?

A. No, sir, he never did.

Q. Who directed the truck driver as the loading of the trucks and routing of them out?

A. How is that?

Q. Who directed the truck driver about loading the trucks?

A. I thought you said routing.

Q. Answer that question first.

A. The truck driver routes his truck himself, and he and I load the truck together.

Q. Do you tell him where to load, and how to load?

A. No, sir.

Q. Who tells him?

A. I load it myself, I read it off the invoice and hand it to him on the truck.

Q. You mean you hand him the actual merchandise on the truck?

A. Yes, sir.

Q. Didn't you testify that the truck driver usually loaded and unloaded the trucks?

A. No, sir. I testified that he helped me. That's the testimony I gave.

Q. Now you say that you yourself load the trucks?

A. I pick it up and hand it to him. He takes it on the truck. We load it together.

Q. He doesn't come in the warehouse and load these hand trucks and trundle them out?

A. I don't understand that question.

Q. Do you mean to tell me that you pick up the merchandise and take it out and hand it to the truck driver to put in the truck?

A. We have a platform like this, and the truck backs up against the platform. We get up our orders, we line them up on this platform back of the truck, in rotation.

as they are routed on the tickets, and I will call off the merchandise off the invoice, and hand it to him on the back of the truck, and he loads it to suit himself.

Q. Who places it on the platform?

A. The truck driver and me.

Q. Who tells him what to place and where to place it?

A. I read the invoice, we read the invoice.

Q. You mean the truck driver reads the invoice, or do you?

A. We read it together. We get up the orders together.

Q. He leans over your shoulder, and you both read?

A. It is not necessary. We both can read.

Q. Is it not a fact that you usually read the invoice and tell the truck driver what to get and where to put it?

A. I read the invoice and tell him three or four rolls of butcher paper, and so many bags and I say "You get the butcher paper, and I will get the bags".

Q. You tell him what to get, and you get what you want to get?

A. Not necessarily that. Some times I will get the butcher paper and some times he will get it.

Q. He gets what you tell him?

A. He always has, yes, sir.

The reading and signing of the deposition by witness was waived by the witness and by the parties hereto by their counsel.

Thereupon the witness was excused.

State of Florida,
County of Escambia.

I, R. E. Sayner, a Notary Public, in and for the State of Florida, at large, duly commissioned and qualified and

authorized to administer oaths and to take and certify depositions, do hereby certify that on May 23, 1946, the aforementioned witnesses, S. D. Robinson, J. O. Gilchrist and Claude J. Jones, who were of sound mind and body, were by me first carefully examined, cautioned, and duly sworn to testify to the truth, the whole truth, and nothing but the truth, with the exception of S. D. Robinson who testified under affirmation; that they thereupon testified as above set forth; that the depositions were taken down and were reduced to writing by me; that the reading and signing of said depositions by the witnesses were waived by the said witnesses and by the said parties by their counsel.

I do further certify that I am not related by blood or marriage nor am I an employee or the attorney or counsel of any of the parties, nor am I a relative of or an employee of said attorneys or counsel or of the aforementioned witnesses, nor am I financially interested in the transaction.

In witness whereof, I have hereunto set my hand and official seal, this 27th day of June, A. D. 1946.

(Sgd.) R. E. SAYNER,
(Notary Seal) Notary Public, State of Florida at Large.

My Commission expires: 9-27-49.

DEPOSITIONS OF THE WITNESSES, JAMES W. NORVELL, PAUL L. MITCHELL AND FRED. L. SAUNDERS, TAKEN ON BEHALF OF PLAINTIFF IN WEST PALM BEACH, FLORIDA, ON JUNE 14, 1946.

Filed Aug. 21, 1946.

968 (Title Omitted.)

Date: 6-14-46.

Appearances:

Hon. George A. Downing and Hon. James H. Shelton, 17 North Avenue, N. E., Atlanta, Georgia, Attorneys for Plaintiff.

Hon. Louis Kurz, 608 Consolidated Building, Jacksonville, Florida, Attorney for Defendants.

I, C. E. Jones, Notary Public, State of Florida at Large, an officer authorized by law to administer oaths, do certify that, pursuant to stipulation of the above parties, by their counsel, dated May 16, 1946, and filed on May 21, 1946, I did, on June 14th, 1946, at 10:00 o'clock, a. m., in Room 211, County Court House, in the City of West Palm Beach, Palm Beach County, State of Florida, proceed to take the depositions of James W. Norvell, Paul Mitchell and Fred L. Saunders, who, after being by me first duly sworn, testified as hereinafter set forth, said testimony being upon oral examination, being transcribed by me, and reduced to writing by me, pursuant to said stipulation.

There were present, George A. Downing, Esq., and James H. Shelton, Esq., attorneys for plaintiff; and Louis Kurz, Esq., attorney for defendant.

Thereupon, the following proceedings were had, to-wit:

971 JAMES W. NORVELL, called as a witness on behalf of the plaintiff, after being first duly sworn by the undersigned Notary Public, in answer to questions propounded, testified as follows, to-wit:

Direct Examination.

By Mr. Downing:

Q. You are Mr. James W. Norvell?

A. Yes, sir.

Q. You are Manager of the East Coast Paper Company?

A. Yes, sir.

Q. How long have you been Manager?

A. About 15 years.

Q. Is that a branch of the Jacksonville Paper Company?

A. Yes.

Q. Mr. Norvell, do you receive any of your supplies or stock of goods from the Southern Industries Company, of Jacksonville?

A. Yes, sir.

Q. About what proportion of your stock is supplied by that concern?

A. I guess over 50 per cent of it.

Q. Is that a guess?

A. I don't have any figures; I have records down at the office; I would judge or guess,—as a matter of fact, it would be closer to 75 than 50 if I had the figures here.

Q. Do you recall when Mr. Carter, the Wage and Hour Inspector, was here last November?

A. No.

Q. You recall a Wage and Hour Inspector was here at this branch last November, October and November?

A. Oh, yes, I do remember somebody coming in.—uh huh.

Q. Do you remember that his name was Charles L. Carter?

A. No, I don't remember what his name was.

Q. Do you remember discussing with him the proportion of goods received from Southern Industries and the proportion received from other sources?

A. No, I don't remember.

Q. Do you remember giving him any figures on that?

A. No, I don't remember.

Q. Do you know what the company's books show in Jacksonville with reference to the proportion of goods furnished you by the Southern Industries?

A. No, I don't recall.

Q. I show you a memorandum prepared by Mr. Carter regarding purchases for the month of August, 1945, and I ask you to examine that and refresh your memory.

Mr. Kurz:

I object to the question on the ground that the witness has said that he does not remember anything about any transaction with Mr. Carter, and, therefore, can't refresh his memory, and on the further ground it is an effort to impeach the testimony of his own witness.

The Witness:

I don't know a thing in the world about those figures.

By Mr. Downing:

Q. You notice that the proportion there given from within the State is aproximately 20 per cent, don't you, for the month of August?

A. He has 80 down here; you have got written down here "Received from out of State $3,766.14 and received from Jacksonville Paper Company $962.00"—I don't know whether that is one week or one month or one day.

Q. The statement purports to be for the month of August, 1945, does it not?

Mr. Kurz:

The same objection to that entire line of testimony.

By Mr. Downing:

Q. Does that purport to be for the month of August?

A. I don't know; I would have to look at the figures.

Q. Look at the figures that I am handing you.

A. I don't know anything about it.

Mr. Kurz:

I object to the memorandum because it is not a record of the company and it is not the best evidence, and the record is the best evidence.

By Mr. Downing:

Q. I will have to ask you to make your answer responsive to my question. Does this memorandum purport to be for the month of August?

A. I know nothing about it at all.

Q. Will you examine it, and after examining it, will that help your memory and—

A. I know nothing about those figures.

Q. I ask you if the memorandum, on its face, purports to be for the month of August?

A. I don't know.

Mr. Kurz:

I object to it, what it purports to be, and the witness says that he knows nothing about it, and it has no bearing on the case, and it is not shown to be a part of the company's records.

By Mr. Downing:

Q. What proportion of your goods that you distribute here, do you receive from points outside the State, Mr. Norvell?

A. Are you talking about since or before the war, or now?

Q. Since June 3rd, 1943?

A. That is during the war.

Q. Since June 3rd, 1943?

A. Up to the present time?

Q. Since June 3rd, 1943?

A. And the question is what per cent of the goods I receive out of the State?

Q. What proportion, if you can state?

A. We have been operating on an allotment basis and if it is the first part of the quarter that the allotment is due in, we will probably receive three or four cars of maybe up to five or six cars in that one month, and then the next two or three months, we will probably receive one or two cars on this allotment, and those are split shipments with Daytona and Miami, and I imagine—well, I couldn't guess—there is no use to guess at it.

Q. Are all of those goods that you receive on allotment basis received from outside the State?

A. No, we have some on the allotment basis from within the State.

Q. Can you state the proportion of your goods received from outside the State? That is what I am asking you?

A. No, I would have to have the figures and the record to see what that is. I don't know.

Q. Are all the split cars that you receive here of goods shipped from outside the State?

A. Yes.

Q. In addition to the split cars, do you some times receive full car lot shipments?

A. Not from without the State.

Q. I wish you would listen to my question and just answer my question, and I will go on to the next point.

As I understand it, the full car shipments which you receive are from Southern Industries?

A. Yes.

Q. All right, sir. How often do you receive full car lot shipments?

A. About once a month.

Q. You get a full car once a month from Southern Industries?

A. Yes, sir.

Q. Do you get a bill of lading covering them?

A. We get an invoice from the Jacksonville Paper Company.

Q. Do you get a bill of lading?

A. The bookkeeper and shipping clerk handles that, and I don't know.

Q. If you do get bills of lading, would those records be in your office files?

A. Yes, sir.

Q. They will show exactly how many you get, will they not?

A. Yes.

Q. Do you get any part car shipments from Southern Industries?

A. No, sir.

Q. Do you get any less than car lot shipments?

A. Oh, yes.

Q. From any sources?

A. Oh, yes.

Q. Are they all received from out of State points?

A. No, we get, if it is printed material like printed cake boxes or printed bakery boxes, we will get those from Southern Industries within the State, and if it is printed gum tape, or sales books, then that comes from without the State.

Q. Are all of your less than car lot shipments of those printed items?

A. Yes, we don't have any car lot shipments of printed items.

Q. Are all of your less than car lot shipments of those printed items, or do you get other items than printed items in less than car load lots?

A. We don't get any car load lots of printed items.

Q. That still doesn't get at the question. All of your printed items come in less than car load lots?

A. Yes, sir.

Q. But are all of your less than car load shipments consisting of printed items?

A. No, sir, not all of them.

Q. What less than car load shipments do you get from Southern Industries other than printed cake boxes?

A. Printed wrapping paper and printed bags.

Q. They come to you from Southern Industries in less than car load shipments?

A. Yes, sir.

Q. Anything else?

A. Well, when they are making brooms, we get less than car loads of brooms.

Q. How long has it been since Southern Industries have made brooms?

A. I don't know whether it was 1943 or 1944 that they cut them out.

Q. It has been at least two or three years?

A. Yes, sir.

Q. Does that exhaust the items that you get from Southern Industries in less than car load lots?

A. I don't know; I have no record before me and I don't recall off hand.

Q. Do you recall any other now?

A. Not now.

Q. How often do you get in less than car load shipments?

A. I can't answer that because the merchants may buy some special colored paper or some special boxes once every ninety days or once every thirty days and what he buys up, he sends those things in and we may get one or two orders a week or a month or one or two in ninety days, and I will have to refer to the records to find out.

Q. How many customers do you have to place such orders with you?

A. Just as many as we can get.

Q. How many do you get?

A. I don't know; I would have to refer to the record.

Q. How many customers do you have?

A. I don't know; we have two ledgers of accounts and I have no idea of the amount of accounts we have in those ledgers.

Q. I suppose the Cashier knows more about those items than you do?

A. Yes, sir.

Q. Good. Do you have railroad siding at your warehouse?

A. Yes, sir.

Q. Are the split cars and the full cars switched for delivery to the warehouse?

A. Yes, sir.

Q. And are less than car load shipments switched there for delivery?

A. No, sir.

Q. How are they delivered?

A. By Railroad delivery, by express or by the U & ME Transfer, or whatever arrangements the railroad organization has to make delivery of such items.

Q. The railroad hires those goods trucked to the warehouse?

A. Yes.

Q. Are the other rail shipments unloaded by your employees from the freight car into the warehouse?

A. The car loads and the split cars are.

Q. Do you also receive delivery by common carrier truck lines other than the less than car load shipments?

A. Yes, sir.

Q. How frequently?

A. Just whenever a special comes through, as we call it; I don't know; the bookkeeper would have to tell you about those records.

Q. I am asking you about deliveries by trucks and n[illegible] records?

A. I don't know whether we have one a week even; I don't know, the records will show, I don't know.

Q. I assume your shipping clerk will know?

A. No, he will have to refer to the records; you certainly don't expect a man to keep all of that stuff right in his head all of the time—you know better than that.

Q. A good man in this business would know more about any of these matters than I am finding out here.

A. When you are running the work and trying to cover the territory as I do, and working all the different angles of the business, you know very well that you can't keep all those details in your mind.

Q. Well, I think it depends on the man.

A. I am not that good.

Q. Are truck deliveries which are made to you less than car load shipments shipped from points outside the State?

A. No, they come from Southern Industries, and from the Jacksonville Paper Company in truck deliveries.

Q. All of them?

A. Yes, sir.

Q. Do you get any shipments in by express?

A. Yes, sir.

Q. How frequently?

A. I don't know.

Q. Are those express shipments from Southern Industries or from points outside the State?

A. Some are from Southern Industries and some are from points outside the State.

Q. Other than the goods that you receive from Southern Industries, do you get any other goods which originate within the State?

A. No.

Q. Do you spend a considerable portion of your time selling, Mr. Norvell?

A. Yes.

Q. Does the branch here have a fine paper department?

A. No, sir.

Q. It only has a coarse paper department?

A. The fine paper that we sell here, we send the orders to Miami or to Jacksonville.

Q. Does the home office in Jacksonville furnish you with a price book?

A. Yes.

Q. Do you use that in making your sales and pricing your sales?

A. Yes, sir.

Q. Do you have separate price books for fine paper and for coarse paper?

A. No, we just tell the people right then and now that we don't have a price on those items and we don't know whether we can get it and we will see if we can get it in our place at Jacksonville or Miami, and then we write them and they write back and we will write the person what the price is and if he wants it, he will let us know.

Q. Now, that is a very illuminating answer that you have just taken your time up to give, but still that doesn't answer my question. My question is, do you have separate price books for coarse paper and fine paper?

A. We don't have a price book for fine paper at all.

Q. Do you have one on coarse paper?

A. Yes.

Q. Approximately how many coarse paper items are listed in it?

A. I haven't the slightest idea.

Q. Does it run into the hundreds?

A. Yes, sir.

Q. Do you carry in stock all of the items listed in the price book?

A. No. We are out of two-thirds of them half of the time.

Q. In addition to the items listed in the price book, do you customarily have customers who some times call on you for other items?

A. Yes.

Q. What are some of the items not listed in the price book with which you supply your customers?

A. Fancy colored papers, special types and kinds of bags.

Q. Anything else?

A. No, sir.

Q. What about specially printed items? Are they listed in the price book or not?

A. Of the items we carry in stock or the stock items, we print them, we have a price on those items that we can give a customer then and there.

Q. Well, does your price book anticpate what kind of a printing the customer is going to want?

A. Oh, yes; you print one size notion bag for $1.25 per thousand and another size millinery bag for $2.00 a thousand, and that is the ordinary printing and it covers

eight square inches there in a certain space on the bag, and then a fellow wants larger printing than that, if he wants it larger, then we explain to him that we have to get another price on that and have the factory do it.

Q. Is the price the same on those printed items regardless of the exact lettering or printing that the customer wants?

A. Yes. The only addition—if a fellow has to make a plate then he is charged additional for whatever the cost of the plate is.

Q. Do the price books bear that charge?

A. No, sir.

Q. Where do you get the fancy colored paper from that you mentioned?

A. Different mills and different sources.

Q. Do you get any from Southern Industries?

A. Yes, sir.

Q. How many different kinds?

A. It is according to what they have in stock when we make the request.

Q. On the special types and kinds of bags you mentioned, what proportion of those do you get from Southern Industries?

A. As a matter of fact, we try to sell all of those from Southern Industries; the only time we get something from some place else is when Southern Industries is not able to furnish us.

Q. How many customers do you have for fancy colored papers?

A. I can't tell.

Q. How many do you have that want special types and kinds of bags?

A. I can't tell.

Q. Do you have any customers who order from you printed cake boxes?

A. Yes, sir.

Q. How many?

A. I don't know.

Q. From how many customers do you yourself take orders for printed cake boxes?

A. Just as many bakery shops as I can.

Q. How many of those then order those items from you personally?

A. I think we have three of them here in town and I think I sell all three of them.

Q. How frequently do they order those special boxes from you?

A. Just whenever they are out of one size; they don't all order them at the same time; a bakery uses eight or ten different sizes, different size boxes; he will buy the size he is lowest on printed, and if he buys 8 x 8 x 4 this time, the next time he might buy some 10 x 10 x 4 or 6 x 4 x 4 or 8 x 5½ x 4, and he will order three or five thousand of those, the ones that he is the lowest on, for his stock.

Q. How often do you call on these bakeries?

A. As often as I can; I some times contact them either by telephone or in person once a week.

Q. Do they usually re-order that often?

A. No, it takes on the average of about six weeks for those orders to come through, and he will place one order now, and he will place an order for different items at different times.

Q. Who supplies those boxes?

A. Southern Industries.

Q. All of them?

A. Yes, sir.

Q. Do you personally have any customers who order specially printed paper bags?

A. Yes, sir.

Q. How many?

A. I don't know.

Q. What business are they in?

A. Various types and kinds of business; some in the grocery business; some in the dry goods business; some in the haberdashery business.

Q. Are any of them in the millinery business?

A. Yes, some in the millinery business, and they operate emporiums and haberdasheries and dry good stores and grocery stores.

Q. And they all order specially printed paper bags?

A. Even hardware stores order them.

Q. Are all of those printed paper bags supplied by Southern Industries?

A. Most of them; some of them order a paper that is furnished by the paper company at Lockland, Ohio.

Q. Do you sell to any customers who order specially printed laundry boxes?

A. Yes, sir.

Q. How many?

A. Well, right now, we have one laundry in the City of West Palm Beach and I take care of all the country trade around here. I don't know, the records will have to reveal that.

Q. You don't know how many laundry customers you sell to yourself?

A. Yes, I sell one.

Q. The one here?

A. Yes, sir.

Q. How often do they order specially printed laundry boxes?

A. I don't know; just whenever they need them.

Q. Who supplies you with that item?

A. Southern Industries.

Q. Do you get any from any where else?

A. No, sir.

Q. Do you sell any customers who order from you personally any printed sales books?

A. Yes.

Q. Can you state the general number of such customers?

A. No, sir.

Q. Do you have many of them?

A. Well, I sell all I can.

Q. Do you have many customers who order that item?

A. The record would have to reveal that; I don't know.

Q. Are all of those sales books supplied to you by the Baltimore Sales Book Company of Baltimore, Maryland?

A. Yes, sir.

Q. Do you sell personally to any customers who order specially printed millinery bags?

A. Yes, sir.

Q. How many millinery shop customers do you yourself have?

A. I don't know.

Q. How many are there in West Palm Beach?

A. I don't know; if you will walk down Worth Avenue, you will find as many on Worth Avenue as on Clematis Street; Clematis Street is the main street in this town.

Q. Are most of them your customers?

A. Yes, sir.

Q. And do most of them, at times, order from you specially printed millinery bags?

A. Not most of them.

Q. How many?

A. I don't know.

Q. Who supplies you with that item?

A. Southern Industries.

Q. All of them?

A. No.

Q. Who supplies you the most of them?

A. Southern Industries.

Q. Where does the rest come from?

A. Different sources, according to the type and quality of paper the customers wants.

Q. From outside the State?

A. Yes.

Q. Do you sell personally to any customers who order from you specially printed gummed tape?

A. Yes, sir.

Q. What types of customers order that item?

A. Grocery stores, flower growers, dry good stores, millinery shops, jewelry stores, and most everybody that wraps packages by gummed tape.

Q. Do they buy it specially printed?

A. Most of them do, if you talk hard enough to get them to print it, you can get most all of them to print it.

Q. Do you try to?

A. Oh, yes.

Q. Who supplies you with that item?

A. Central Paper Company, Menasha, Wisconsin.

Q. Do you sell personally any customers who order from you specially printed clothing boxes?

A. Yes, sir.

Q. What types of customers order that item?

A. Haberdashery emporiums and dry good stores.

Q. Do you have many such customers?

A. All I can get.

Q. How many do you get?

A. As many as I can find.

Q. Do all of them order those items from you at times?

A. All of them order?

Q. Specially printed clothing boxes?

A. Those that I can get to order them.

Q. How many of them can you get to order them?
A. I don't know.
Q. Who supplies you with that item?
A. Southern Industries.
Q. All of them?
A. Yes, sir.
Q. You don't get any from outside the State?
A. No.
Q. Do you have any customers who order from you personally beverage napkins, specially printed?
A. Yes.
Q. What type of business orders that item?
A. Night clubs and hotels and cafes.
Q. Do you have many such customers?
A. All I can get.
Q. Do they order that specially printed item from you?
A. Yes.
Q. All of them?
A. Not all of them.
Q. I have an exhibit, Mr. Norvell, that I will hand you that I picked up personally last night from a cocktail room,—will you examine that and see if that is one of the specially printed items that you handle?
A. Definitely I don't sell this because this is sold in Jacksonville, but that is in my samples to sell. I can that, but Mr. Linder, the Manager here at the hotel doesn't have the authority to make the purchases, and the Manager in Jacksonville purchases it for all of their hotels.
Q. From the Jacksonville Paper Company?
A. I don't know.
Q. You say that you have authority to sell it?
A. I have that line in my sample of the Erving Paper Mill, and they print it from time to time.
Q. If Mr. Linder would buy from you, would you sell it to him?
A. Oh, yes.

Mr. Downing:

We ask that paper napkin be marked as Plaintiff's Exhibit No. 1 for identification.

Thereupon, the paper napkin referred to was marked Plaintiff's Exhibit No. 1 for identification, and is annexed hereto, the reception in evidence to be passed upon by the Court later.

By Mr. Downing:

Q. Where is the Erving Paper Mill that you mentioned?

A. At Erving, Massachusetts.

Q. Is that exhibit typical of the type specially printed beverage napkins which you sell your customers?

A. Yes, they are all printed, not that particular design though.

Q. I see. Do you sell personally to any of your customers specially printed guest checks?

A. No, I haven't got a customer that uses specially printed guest checks; all of mine use stock printed.

Q. Do you have such item listed in your price book?

A. I don't recall.

Q. Are you authorized to sell or take orders for such specially printed items?

A. Yes.

Q. Haven't you tried to sell any of them?

A. No, our places around here open up and close and sell out so fast that when they have need for guest checks they use the stock kind.

Q. Do any of your customers here that you sell personally order specially printed dry cleaning boxes or dry cleaning bags?

A. Dry cleaning bags, yes.

Q. I suppose that pressing shops and dry cleaning places would order those?

A. Yes, and laundries.

Q. How many such customers do you have personally?

A. I don't know.

Q. Are there a number in West Palm Beach?

A. Yes, sir.

Q. Do all of them, at times, order specially printed bags?

A. All that I can get to order.

Q. Where do you get those from?

A. From Southern Industries.

Q. All of them?

A. Yes, sir.

Q. Do any of your customers order from you specially printed millinery tape?

A. What do you call millinery tape?

Q. I will ask you what you call it. You know better than I.

A. If you refer to the little printed string, printed and string or a piece of ribbon from 1/8th to a half an inch wide, yes—they order that from me.

Q. All of your millinery shop customers order that from you?

A. Not all of them, but as many as I can get do.

Q. Who supplies you with that item?

A. The General Printed String Company, and we have another one down there—we have another source, but I can't recall the other one right now—but one is the General Printed String Company, and the other is its competitor.

Q. Are they both from outside the State?

A. Yes, sir.

Q. Do any of your customers order from you personally printed shirt wrappers?

A. Do you mean shirt bands or shirt envelopes that the shirt goes in?

Q. Either.

A. No, I haven't sold any since the war started.

Q. Does your answer also extend to printed shirt bands as well as wrappers?

A. No, I haven't sold any of those since the war started.

Q. Do you have any customers who order from you special printed notion bags?

A. Yes, sir.

Q. What type of customers order that item?

A. Dry good stores, emporiums and haberdasheries.

Q. Do you have a number of such customers?

A. Yes, sir.

Q. Do all of them order this item from you?

A. Not all of them.

Q. Who supplies you with those goods?

A. Southern Industries.

Q. All of them?

A. Unless it is something special they have not got, and then I order from another source.

Q. How often do you order from another source?

A. I don't know.

Q. Do any of your customers order from you coffee bags which are printed?

A. Yes, sir.

Q. What sort of customers order those?

A. Coffee roasters.

Q. How many coffee roasters are at West Palm Beach, Florida?

A. Two.

Q. Are they both your customers?

A. Yes, sir.

Q. Do they both order that item?

A. Yes, sir.

Q. From what source do you get them?

A. From different sources; we will write two or three different mills to get the price and which ever has the best price on the item on that particular type of paper, then we place that order there.

Q. As a matter of fact, are all of your goods ordered for you through the Jacksonville office?

A. Yes.

Q. Aren't you at this stage talking about something you know nothing about?

A. What do you mean?

Q. Writing to two or three mills to get the best price—isn't that done by Jacksonville?

A. I get copies of all that correspondence.

Q. So, you are speaking of what you have learned by reading the copies?

A. They don't know that I want a price on a coffee bag until I ask them, and if I ask them for a price on a red ribbed coffee bag or an alligator, maybe they will write back that they can't supply the alligator, but maybe they will say that they can supply this over here and that they are willing to do so and so about it, and if they say that they can supply me with a certain bag, then I go to the customer and say will you take it or not, and, in the meantime, they will ask me what the price is and then talk it over with the customer about what it will cost from the copy that they send me, and I may be able to supply what they want.

Q. Do any of those bags come from Southern Industries?

A. No, sir.

Q. Do you have some customers that order specially printed shipping tags?

A. No, sir.

Q. What is "ad wrap"?

A. That is a special kind of wrapping paper.

Q. Do you handle it?

A. Not in stock; we don't stock it.

Q. Do you have any customers ordering from you specially printed ad wrap, or otherwise?

A. Yes, sir.

Q. What lines of business are they engaged in?

A. Dry goods and stationery and any kind of store that wraps a special type of package—I might say that wants a special type of paper—that is what I meant awhile ago when I said if we didn't have the special kind in Jacksonville, we got it from different sources.

Q. Do Southern Industries supply you with ad wrap?

A. No.

Q. When these special goods come in that you have ordered, that you have ordered specially for your customers, are they placed in stock?

A. Yes, it has to be placed there, because we make no deliveries—that is, as soon as we get it, we don't send it right out unless we have a truck going that way, and so that day or the next day we place it in our place of business there until we make delivery.

Q. You store it awhile?

A. We have a warehouse and we have deliveries going north and south, and if this merchandise is going north and our truck is going south that day, then it stays there until the truck goes north.

Q. In other words, you store it for awhile?

A. We don't call it in storage; we take it in the warehouse —we are not in the storage business.

Q. Is the invoicing and other clerical work on these special goods any different from that on the stock items?

A. I don't know what you mean. What do you mean "any different"?

Q. Is the order taken in the same way?

A. Yes, sir.

Q. And is the order sent to Jacksonville in the same way by the same people—does the same office force handle it?

A. If we have a salesman who writes an order for a thousand printed bags, he will write another order for a thousand plain and I personally handle the printed order for the thousand printed bags whereas the shipping clerk and the bookkeeper handles the other order for the plain bags.

Q. What about the billing of the goods on the specially printed items—is that handled just like on the stock items,—you bill them the same way when the goods come in?

A. Yes, sir.

Q. And when the monthly statements are sent out, does the same person get up the statements on that item as on the other item?

A. Yes, sir.

Q. The goods are delivered in just the same way, aren't they?

A. Yes, sir.

Q. Does it take any less time or more time to process a special order than it does a stock item?

A. What do you mean by "process" it?

Q. Get it on through and get the goods ordered and get them to the customer?

A. Some times it takes five or six months to get that order through, and a plain order, you get it some times the same day.

Q. [illegible] I am referring to the actual time used by your employees in connection with the job, after the merchandise comes in printed up, it takes more time to deliver that than anything else?

A. After the merchandise comes in printed up, it takes more time to deliver that than anything else.

Q. Is it necessary in case of special orders to write follow-up letters, inquiring as to when they will be received?

A. Yes, sir.

Q. Who writes those letters—you?

A. I do.

Q. Whom do you dictate them to?

A. Right now, I do the writing on the typewriter myself; I have no stenographer.

Q. Right now you have no stenographer?

A. No, sir.

Q. How long since you have had a stenographer?

A. Since the war.

Q. How long was that?

A. Since the war started.

Q. That is when? Did that start exactly December 7, 1941?

A. She quit shortly after that.

Q. And you had no stenographer since?

A. That is right.

Q. Does the cashier ever type those letters?

A. Some times.

Q. The cashier does all the bookkeeping?

A. Yes.

Q. Who does the filing of the correspondence and other clerical papers around the office?

A. The cashier.

Q. Does the cashier get up and send out the monthly statements?

A. Yes, sir.

Q. Does she post all the invoices?

A. Yes, sir.

Q. You referred earlier in your testimony to the fact that your supply of goods is allocated to you in some manner. Do you mean by your home office in Jacksonville?

A. Yes, sir.

Q. Will you explain that a little more fully?

A. I can't explain that; I don't even know what percentage I am supposed to have, that is my allotment, and that is all I can say.

Mr. Kurz:

Off the record.

(Discussion outside the record.)

By Mr. Downing:

Q. I will ask you if you know whether the allocation is partially based on the amount of business which this branch did in the past?

A. I don't know.

Q. Now, are you in truth, able to supply your customers here with all the goods which they order from you?

A. Certainly not.

Q. Do you, in turn, allocate or allot the portion of the supply which you receive among your customers?

A. Yes, to the best of my ability.

Q. Have you received any instructions from the Jacksonville office as to how you should make that allocation or allotment?

A. No, sir.

Q. On what basis do you attempt to make it?

Mr. Kurz:

I object to that on the ground that it is irrelevant and immaterial and calls for a business practice which has no bearing in this case.

By Mr. Downing:

Q. Answer it.

A. Well, if one customer uses 10 rolls of paper a week and another customer uses two rolls of paper a week and I have to cut either of those customers, I will give the fellow that uses two rolls 50 per cent of what he uses and I will give the fellow that uses 10 rolls 50 per cent of what he uses,—in other words, one customer will get one roll and the other customer will get 5 rolls.

Q. That refers to a situation where you have only half enough to go around to everybody?

A. Yes, sir.

Q. And if you only had one-fourth enough to go around, you would make it one-fourth of what they normally order?

A. That is right.

Q. Because of the shortage in goods, do you frequently receive from your customers orders when there is no supply on hand?

A. Oh, yes.

Q. Do you simply turn those orders down or do you hold them awaiting the receipt of a fresh supply?

A. We make a little memorandum and when we get that type and kind of merchandise, we will then order back and ship it to the merchant.

Q. Is that memorandum what is some times known as a back order?

A. Instead of using our regular printed orders for that purpose—we have to account for those orders in a certain time—we don't use one of them, and it might be 60 days before this merchandise comes in, and we put it on a little tablet form and put it up on the hook.

Q. And when the supply does come in, you turn to that file and decide on what basis you will apportion the goods?

A. That is right.

Q. Are goods any more plentiful now than they have been through the war years?

A. Some of our items are even scarcer.

Q. Are any of them more plentiful yet?

A. I haven't found any of them yet.

Q. So, you are still very much on an allocation or allotment basis even now?

A. Yes.

Q. Mr. Norvell, who is the cashier here?

A. Fred L. Saunders.

Q. How long has he been cashier?

A. A little over a year.

Q. Who was cashier before him?

A. George V. Rogers.

Q. How long was he cashier?

A. About 12 or 15 years.

Q. Did Mr. Saunders and Mr. Rogers generally do the same kind of work?

A. Yes, sir.

Q. Do you have any other employees in the office?

A. Not in the office.

Q. Do you have a shipping clerk?

A. Yes, sir.

Q. Who is that at the present time?

A. Paul Mitchell.

Q. How long has he been shipping clerk?

A. Almost two years—maybe a little over two years.

Q. Who was shipping clerk before him?

A. Bob Mathers.

Q. How do you spell that name?

A. M-a-t-h-e-r-s.

Q. How long was he shipping clerk?

A. I don't recall.

Q. Was it for any substantial period of time?

A. No, Bob worked with me two or three times, off and on; he would work for awhile and quit and then come back and work some more, and then quit and then come back, and that is the reason I had to change to somebody else that I could get to stay there.

Q. When he acted as shipping clerk, did he do generally the same kind of duties Mitchell did?

A. Yes, sir.

Q. And perform the same duties?

A. Yes, sir.

Q. Do you have any other employees regularly employed in the warehouse?

A. Yes, sir.

Q. What do you call them—warehousemen?

A. Yes, sir, warehousemen and truck drivers.

Q. How many warehousemen do you have?

A. One.

Q. Who is he now?

A. Robert Burke.

Q. Burton?

A. No, Burke.

Q. How long has he been the regular warehouseman?

A. He got out of the navy three or four months ago and came back with us; I have had him about three or four months.

Q. Did you have a regular warehouseman before that?

A. I had a negro that worked as warehouseman and they changed from day to day and week to week, and they stayed as long as I could keep them.

Q. Who was he?

A. There were hundreds of them, I don't know.

Q. You just switched around and hired whom you could get?

A. Yes.

Q. When you had them, did they do the same work as Burke?

A. Yes, sir.

Q. You mentioned your truck driver in connection with the warehouseman, I believe. Does the truck driver work in the warehouse?

A. Yes, sir.

Q. When he is not making deliveries?

A. Yes, he helps make up his run and then starts out to deliver it.

Q. He spends most of his time truck driving?

A. Yes, sir.

Q. How much?

A. This warehouseman will start getting up the load and the shipping clerk will start billing it and the truck driver and shipping clerk and warehouseman will load it on the truck, and some times it takes all the employees back there, and then he starts out to make his deliveries and some times it takes him all day and some times only half a day and some times only two hours to deliver the load according to his merchandise.

Q. When he gets back from the deliveries, does he work in the warehouse?

A. Yes, and if we don't have another load ready, he pitches in and helps get up another load.

Q. Does he make all of your deliveries?

A. No, I have two truck drivers.

Q. Who are your truck drivers?

A. One of them is Abe; I don't know his name.

Q. You don't know either one of them?

A. I call one Abe and one James.

Q. Do they both make city deliveries or do you have a country delivery run?

A. We deliver as far south as Delray and deliver as far north as Riviera,—that is the little town just north of us here.

Q. Is one of your truck drivers generally confined to the city deliveries and the other to the country run?

A. 'Right up and down the coast, these towns that I am talking about, that is not considered country runs.

Q. Do you have a country run?

A. We used to, and when I can get another truck, I will have another run.

Q. How do you make deliveries to your customers who are normally on what would be known as the country run?

A. We send it out by common carrier.

Q. Truck line?

A. Yes, sir, truck line.

Q. Do you send any by express?

A. Just now and then if somebody calls up and wants something by express.

Q. Do you send it by freight,—do you send any by freight?

A. No, all the rest of it goes by truck line.

Q. How much of your time do you spend in the office, Mr. Norvell?

A. Oh, just as small amount as I can; I try to spend most of my time out in the territory.

Q. Selling?

A. Yes.

Q. Are there any other salesmen?

A. Yes.

Q. How many?

A. One.

Q. Do you do any routine office work yourself?

A. Other than keeping up with the special orders and ordering the merchandise for the warehouse.

Q. How much of your time does that take?

A. I can't tell. If it is just a few special orders I am going to order, it takes 10 or 15 minutes, and if I am going to order a car load of bags, it might take an hour or two hours and some times at night I go down and figure out a car of wrapping paper so I won't be disturbed.

Q. Does the cashier perform all the remaining clerical work?

A. Yes, sir.

Q. Did the cashier ever assist in the warehouse?

A. Yes, when anybody is out for lunch, or most everybody, and there are just two there, if anybody wants a package of napkins, for instance, he will go back and get it for them.

A. Does the cashier ever assist in unloading goods or trucking them into the warehouse?

A. No.

Q. Or checking them in?

A. He may check in a little printed order of merchandise.

Q. Does the cashier wait on the trade?

A. Yes, he will answer the telephone or write up an order there at the desk.

Q. As customers come in to purchase?

A. Yes, sir.

Q. Is there any one else in the office who does that?

A. Our warehouseman is supposed to do that.

Q. Does he do that in the office or in the warehouse?

A. That is in the warehouse.

Q. Do the customers generally come to the office or into the warehouse to give their orders?

A. Well, this is the warehouse, and this corner right over here is the office (indicating); you are in the warehouse when you are in the office.

Q. If the warehouseman is gone, does the cashier take the order?

A. Yes.

Q. Is all unloading done by the shipping clerk and the warehouseman and the truck drivers?

A. No, some times we have to hire extra labor to unload a car of merchandise.

Q. Are you referring to full cars?

A. Either full cars or split cars, if the truck drivers are out in the territory delivering and a car is stopped to unload it, we only have a certain length of time to unload it, and we go out and pick up one or two or three negroes to unload that so we won't be penalized with a demurrage charge.

Q. You pay that part time labor on extra labor vouchers?

A. Yes, sir.

Q. Other than that extra labor, is all warehousing and unloading done by the shipping clerk and the warehouseman and the truck drivers?

A. Yes, sir.

Q. Does the shipping clerk, in general, do the clerical work in connection with the checking in of the goods and the getting up of orders—by paper work, I mean the checking of the goods against the invoices and so forth.

A. No, the shipping clerk puts in his receiving record the goods that he receives; the cashier checks the shipping clerk's records against the invoices.

Q. Does the shipping clerk physically assist in unloading goods?

A. Some times.

Q. And in stacking them and storing them in the warehouse?

A. Some times.

Q. And does he also physically assist in getting up orders?

A. Some times.

Q. Which of the employees signs daily time sheets?

A. All of them except the shipping clerk and the cashier and the salesman and the manager.

Q. That just about knocks all of them out, doesn't it?

A. No, that leaves the truck drivers.

Q. Who else does it leave, the warehouseman?

A. That is right.

Q. The shipping clerk does not sign?

A. No, sir.

Q. The cashier doesn't sign.

A. No, sir.

Q. And you don't sign?

A. No, sir.

Q. Truck drivers do sign?

A. Yes, sir.

Q. Whose job is it to see that they do sign in and out?

A. The shipping clerk.

Q. And to whom are those daily time sheets delivered?

A. To the bookkeeper-cashier.

Q. Did any of the employees there sign contracts or any other written memorandum of employment when they came to work?

A. I don't know.

Q. Well, did you hire them?

A. No, Jacksonville hired the cashier and transferred him in there to me; I hired the shipping clerk and he didn't sign any contract and agreement; I hired him to do a certain job with the understanding if he had the ability to do that we would pay him so much money.

Q. Did the warehouseman sign anything?

A. No, sir.

Q. How about the truck drivers,—did they sign anything?

A. No, sir.

Q. Did you ever see any of those green sheets down there in your place headed "Application for Employment Notice"?

A. Do you mean that kind of contract agreement?

Q. Yes.

A. Yes, we have a full set of those papers and everything else that we fill out there.

Q. Do all of those employees sign that green employment notice?

A. Yes, they sign the full set of papers.

Q. Doesn't that notice specify how many hours they are to work and how much their hourly rate is and all that?

A. Yes.

Q. They sign that, don't they?

A. Yes, sir.

Q. Do all of them sign that?

A. All of those that are on the payroll; the extra labor crowd doesn't sign that.

Q. What is the regular schedule of hours at that branch?

A. 50 hours.

Q. Beginning when and ending when?

A. Starting off at eight o'clock Monday morning and ending at one o'clock Saturday at noon.

Q. What is your daily quitting time except Saturday?

A. Six o'clock in the evening.

Q. What is your regular lunch period except Saturday?

A. 12 to 1 or 11:30 to 1:30, that takes them all in.

Q. They each take an hour?

A. Either an hour or thirty minutes, according to how busy we are.

Q. In those casas where they only take 30 minutes, do they show 30 minutes on their time sheet?

A. Yes.

Q. Are they paid extra for that 30 minutes?

A. Yes.

Q. How often does that happen?

A. During January, February and March down here it is pretty regular and during June and July and August, it is not, we can take full hours during the Summer time and during the Winter time we are good to get 30 minutes.

Q. Do any of the employees there get a bonus?

A. Yes, sir.

Q. Which ones?

A. The cashier, the shipping clerk.

Q. Does Robert Burke get a bonus?

A. No, he hasn't been there long enough; you have to be there over a year.

Q. Do any of the truck drivers get a bonus?

A. No, sir.

Q. Who makes the largest salary, you or the cashier?

A. I guess the cashier makes a larger salary; mine is based on a drawing account and a commission.

Q. You receive a commission in addition to your salary?

A. Oh, yes.

Q. What about the total wages,—does your income exceed the cashier's or not—your total income, including commission?

A. Yes, sir.

Mr. Downing:

Your witness.

Cross Examination.

By Mr. Kurz:

Q. Mr. Norvell, you testified about certain special items that you sell to particular customers—they are

specially printed items, and you mentioned with reference to the beverage napkin that you carried samples similar to the exhibit that was introduced here. How many sales of that type of specially printed napkin have you made, say in the last six months?

A. Two or three.

Q. With reference to this same specially printed item and special items, I will ask you how they compare in volume with the general merchandise that you sell out of stock?

A. Less than one per cent, or maybe one-tenth of one per cent; we sell a car load of bags or we will say 8,000 pounds, and we will sell 10,000 printed bags or maybe we won't even sell 10,000, which is in proportion to each car load of bags we sell.

Q. How many pounds would those 10,000 bags weigh?

A. 150 to 200 pounds.

Q. What about printed gummed tape for special customers—how does that compare in weight per order with your general orders of stock items?

A. We try to sell, in order that the factory make delivery of the tape, as much as 100 pounds, and it takes 135 rolls of one inch gummed tape to make 130 pounds.

Q. How long would it take your warehouse crew to handle such an order into and out of the warehouse to make the delivery?

A. That is just two little bundles, about a minute or a mintute and a half—just time enough to pick up the little bundles there and throw it on the truck.

Q. You say that you sell specially printed coffee bags to two customers?

A. Excuse me, there is Mr. Mitchell out there now.

Mr. Downing:

Just ask him to wait, please, sir.

(Discussion outside the record.)

By Mr. Kurz:

Q. How many orders do you get for them in the course of a year?

A. One to two orders; if they buy both of their sizes, half pound and pound bags, both at one time, you will only get one order per season or year, and if they only buy half pound bags this time and the pound bags at another time, you will likely get two orders a year.

Q. How long will it take to bundle such order into and out of the warehouse?

A. Oh, two or three minutes.

Q. What about millinery tape—is that a bulky item?

A. No, sir, that is a little tape about this big (indicating) around a thousand yards of tape on a spool, and it weighs about one and a half pounds or maybe two pounds.

Q. How many orders would you say that you get of that particular merchandise per month,—specially printed orders?

A. Right at this particular time, we wouldn't get one order of that per month; the fact is we won't get one order of that now until the beginning of the season.

Q. How many orders do you get per month during the season, of that time?

A. Oh, two or three orders per month.

Q. What about the rest of the specially printed items and special items that you order for particular customers,—how do they compare in volume with your total volume of business?

A. Less than one per cent or one-half of one per cent, or maybe as little as one tenth of one per cent.

Q. I believe you said that you handled the special orders and the printed orders yourself?

A. Yes, sir.

Q. That is making the orders?

A. Yes, sir.

Q. What else remains to be done about the handling of that type of orders through your office?

A. Nothing. When I send Jacksonville the requisition for that particular type and kind of printed merchandise, they ship the order; the original order that the salesman takes is put in the shipping department and when that is delivered by the transportation company, the shipping department ships that right out, and it is ready to be delivered.

Q. That order, when made, is made in quadruplicate on the form?

A. Yes, sir, that original order is made in quadruplicate on the form, and I take the order and make the requisition from that to Jacksonville, and that original quadruplicate order is placed on the file for the shipping clerk to ship on arrival of that particular type of merchandise.

Q. And the original of that is delivered to the customer then as his invoice?

A. Yes, sir.

Q. Who is in charge of the office when you are out of the office?

A. Our cashier.

Q. Who is in charge of the warehouse?

A. Our shipping clerk.

Q. Who employs the extra labor?

A. Our shipping clerk.

Q. Does the shipping clerk have authority to recommend the employment of any particular one?

A. Oh, yes, when we get ready to unload a car, if these drivers are out, he will hire the extra help and discharge the extra help when he finishes with them.

Q. Does he have authority to discharge?

A. Yes, sir.

Q. Does the cashier have authority to recommend the employment of any one?

A. Yes, sir.

Q. Does he have authority to discharge?

A. Yes, sir.

Q. When you said none of the employees signed an employment agreement, you didn't refer to the regular form that shows the schedule, did you?

A. We have an application blank that he fills out, and then to put him on the payroll, we have a little form there that we have a place to fill out for the accounting department to place him on the payroll, and that is the form that I said our employees sign when they got placed on the payroll.

Q. All of them sign that?

A. Yes, sir.

Mr. Kurz:

That's all.

Re-Direct Examination.

By Mr. Dowling:

Q. Are specially printed items priced and sold at any higher price than stock items?

A. Yes, the printing charges are added, and they usually buy a better quality of paper when they are going to print up a special item.

Q. I judge by that that on the basis of sales the proportion would be larger than on the basis of poundage as compared in that fashion?

A. For instance, if a man buys 10,000 17 x 21 millinery bags printed, he would buy only 1,000 21 x 17 millinery bags plain; there is no use for him to buy 10,000 plain bags when he can get a thousand plain bags any time that he wants them out of our stock, but he has them printed and he wants them special and a little better grade of paper, he will then buy 10,000 printed because he will get a little better price on the printing and the paper.

Q. But that is not the point I am getting at. You testified on cross examination as to the proportion on a poundage basis of special items as to the regular items. Now, I am getting at the question of whether on a dollar and cents basis the sales price on the printed items would be in a higher proportion than on the poundage basis?

A. Yes, the printed items would be higher than the plain items.

Q. What is the difference by thousand in price between the plain item and a specially printed item of the sort that you mentioned awhile ago?

A. It is according to the quality of the paper that the man chooses.

Q. And, as I understand it, in general, on the printed items, he orders a higher quality, is that correct?

A. Yes, sir.

Q. And the price is, therefore, higher?

A. Yes, sir.

Q. You spoke of the time it would take in getting these, in handling these special items into the warehouse. As I understand you on direct, you said that they are placed in stock?

A. Yes, sir.

Q. And they await there the delivery truck, the nex trip made in that direction by the delivery truck?

A. That is right.

Q. And after that, is it necessary to get up the orde and load it on the truck just as in the case of a regula item?

A. Yes, we have to get it up just like any other iten then.

Q. Suppose it is a special item that is going out t the country trade,—is it necessary for you to re-wrap o re-package it in any manner for shipment?

A. We have to put our label on it and write up th bill of lading for the shipment the same as any item w have in stock.

Q. Who does that?

A. Our shipping clerk.

Q. And are those papers thereafter delivered to th cashier for filing,—the copies?

A. Yes, sir.

Q. And as I understood on direct, the cashier doe the clerical work with reference to filing the invoice an sending out the statements?

A. Yes, sir.

Q. And when the remittances come in, who handle that money?

A. The cashier.

Q. Does he send out the receipts or acknowledge th payment?

A. No, if the customer mails us his check, it has a invoice number attached to the check and his check is hi receipt then; if a salesman collects the account, the sales man marks the merchant's invoice paid and writes hin up on his collection book.

Q. During the time that you are absent from the of fice does the cashier handle all necessary correspondenc and letters in regard to these accounts?

A. Yes, sir.

Q. Do you have any customers who have placed standing orders for you for periodic delivery?

A. No.

Q. None at all?

A. None at all.

Q. Do you have any who have contracts covering a period of time, or any agreement over any period of time?

A. No.

Q. Do you have any ice cream company customers?

A. Yes.

Q. Do you have any milk company customers?

A. Well, the ice cream and the milk companies are the same thing that we have here.

Q. They handle both?

A. Yes.

Q. Do those customers place with you orders for large quantities to be held and delivered to them as they require?

A. No, I sell Alfar Creamery a million printed napkins at a time; he gets them all in at one time—that is ordered from the factory and they can ship them all at one time, but some times the factory ships half of them at one time and the balance a little bit later, and some times they ship the whole million at one time.

Q. Is that an order for a season?

A. Yes, sir.

Q. When do they place that order for the season?

A. Usually around between August and September to be delivered in November and December.

Q. Is it specially printed?

A. Yes, sir.

Q. Are there any other items that they order on a seasonal basis?

A. In this particular country down here, all companies try to get what supplies and bags in that they need by the time that the season gets under way.

Q. Do you have any other customers that order from you on a seasonal basis?

A. That is not a particular season; if he should run out of that in January or June, he will give me the order, when he needs a million napkins, he will order it, and if the factory can ship it all at one time, they can take the shipment of it, or they may ship part of it and back order the balance.

Q. Does a million usually meet his requirements for a year?

A. He buys a million because it comes down to a price that he likes to pay; the more you buy, the less you pay.

Q. But it constitutes usually a season's supply?

A. Some times he gets less than that and some times more than that.

Q. Do you have any other customers who place orders with you for their season's requirement?

A. No, they don't figure out exactly a season's requirement; they buy according to the quantity and the place; if a hundred thousand bags is too much for him and it is cheaper and he can only use 10,000 and would pay more, but the 10,000 would cost much less in total, then maybe he would only order 10,000 but if he could use the larger amount he would order it in order to get it at the smaller price.

Q. Have you solicited from that milk and ice cream company their order for next season?

A. Not yet.

Q. Are you going to?

A. Oh, yes.

Q. Who supplies you with that million napkins which they ordered?

A. The Erving Paper Mill.

Q. In Erving, Wisconsin?

A. Erving, Massachusetts.

Q. Pardon me. Do you sell the Penn Company here or any telephone company?

A. Occasionally.

Q. What is the name of the telephone company?

A. Southern Bell.

Q. Do they order any special type of paper not used by your other customers?

A. No. What I sell them is a few paper towels and a few paper bags.

Q. Do they have a type of roll adding machine paper that they use?

A. I don't know; they get their supplies out of Jacksonville and I fill it from this place.

Q. From your Jacksonville office?

A. From their Jacksonville office; they have a man that makes requisition for their supplies and when he is short with some of the supplies, he will ask me to supply them with certain items.

Mr. Downing:

That is all.

Re-Cross Examination.

By Mr. Kurz:

Q. How much will this million napkins weigh?

A. There is 10,000 to a case; that will be 100 case, and a case weighs around 30 to 40 pounds; and that will run right close to 4,000 pounds if you get the full million at one time,—it runs 30 to 40 pounds to the case and 10,000 in the case, so that would be 100 cases to make a million napkins and if it weighed 40 pounds to the case, that would be around 4,000 pounds.

Q. You get an order like that once a year?

A. About once in the year, yes, sir.

Q. How long would it take to handle that quantity into the warehouse and out of the warehouse to make delivery?

A. If you get the whole hundred cases, it would take us about 20 or 30 minutes to load it on the truck, and it also takes about 20 or 30 minutes to take it off the railroad company's truck to deliver into the warehouse.

Q. Does it take more time in your warehouse, of your warehouse crew to handle paper that sells for five cents than it does to handle paper that sells for fifty cents?

A. No, not any more time.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Downing:

Q. Are those million napkins placed in stock?

A. Oh, yes,—we may get them when our truck is going in the opposite direction from town to where they will be delivered and it may come off of the railroad delivery line at such a time, and if so, we put them in our warehouse and hold them until our truck goes that way.

Q. Would they stay in storage there for a few days or in stock there for a few days?

A. According to the next trip that we have going in that direction.

Q. How soon will that be?

A. I will contact the customer and if he needs them, on the next trip we will send them to him the next day, or within the next day or so, and if he says to us to keep them for a week or so until he can arrange to stock

them in his place, then some times we hold them for a week or so until he can fix a storage space to receive them.

Q. How often does he ask you to hold them and store them for him?

A. Just whenever he has a space ready to store them at that particular time.

Q. Does he ever take part of them and ask you to hold part of them?

A. Yes, sir.

Q. How often does that happen?

A. Most every shipment, he will put part of them in one place and some in another storage place.

Q. 4,000 pounds is two tons, isn't it?

A. Yes.

Mr. Downing:

That is all.

Re-Cross Examination.

By Mr. Kurz:

Q. When merchandise of that kind is in your warehouse, does it require any attention from your warehouse crew?

A. No, sir.

Mr. Kurz:

That is all.

Re-Direct Examination.

By Mr. Downing:

Q. Do they ever have to move it around to make storage space?

A. No, when we bring it off the transportation truck, we store it so it will be convenient for the trucker in getting it out, to put it on the truck when going out.

Q. But when you have it stored there in that fashion, has it ever gotten in the way of other goods?

A. No, sir.

Mr. Downing:

That is all.

Mr. Kurz:

No further questions.

Mr. Downing:

The reading and signing of the deposition by the witness is waived, is that correct?

The Witness:

Yes, sir.

Mr. Downing:

The reading and signing of the deposition by the witness having been waived by the witness, is it agreeable to make such waiver by counsel, Mr. Kurz?

Mr. Kurz:

It is agreeable to me to waive the reading and signing of this deposition by the witness.

Mr. Downing:

Such is waived by me on behalf of the plaintiff.

(Witness excused.)

1019 Thereupon, PAUL L. MITCHELL, called as a witness on behalf of the plaintiff, after being first duly sworn by the undersigned Notary Public, in answer to questions propounded, testified as follows:

Direct Examination.

By Mr. Downing:

Q. You are Mr. Paul L. Mitchell?

A. Yes, sir, that is right.

Q. You are employed by the East Coast Paper Company?

A. Yes, sir.

Q. In what capacity?

A. Shipping clerk.

Q. How long have you been so employed?

A. Well, the 14th of this month will be two years—that is today, isn't it?

Q. Yes, that is today.

A. It was two years ago today.

Q. This is your anniversary then?

A. Yes, two years ago today.

Q. Is it part of your duties as shipping clerk to receive and check in incoming goods?

A. Yes, sir.

Q. Do you receive any goods from Southern Industries in Jacksonville?

A. Yes, sir.

Q. And do you also receive goods from other manufacturers?

A. That is right.

Q. Other than Southern Industries, are any of those other manufacturers located in Florida?

A. Well, as far as I know.

Q. As far as you know what? They are or they are not?

A. Well, here is the idea, I don't know where the shipping comes from mostly; I do know when we get a car load of bags from Jacksonville.

Q. When the pool cars come in, do you know the origin of those goods, those cars?

A. Not very often.

Q. Do you assist in the unloading of the goods?

A. Yes, sir.

Q. Are they or not marked with the name of the manufacturer?

A. Most of them are not.

Q. Which ones are not?

A. Well, such as tinware and stuff of that kind is not marked with the manufacturer's name on it.

Q. Who does manufacture that?

A. You would have to ask Mr. Norvell.

Q. Do you know?

A. No, sir, I don't.

Q. You don't?

A. No, sir.

Q. You have no knowledge whether it is made in the State or not?

A. That is not, I wouldn't think that would come under my business as shipping clerk.

Q. Without regard to whether it is under your business or not, we are here to question you about what you know.

A. Yes.

Q. And you are to answer yes when you know in response to these questions. Do you know where it is made?

A. I don't know where it is made.

Q. I believe that you said the other goods in less than car load shipments, except tinware, was marked with the manufacturer's name or tradename?

A. Yes, sir.

Q. Are any of those manufacturers located in Florida?

A. I don't think so.

Q. Do you know?

A. Not positively, no, sir, I don't.

Q. You have heard of Prossett Paper Mills, haven't you—up here in—

A. No, sir.

Q. And the Crockett?

A. I have heard of Crockett.

Q. Where is that?

A. I don't know.

Q. Have you heard of the Calcasieu Paper Company?

A. Yes.

Q. Where is that?

A. I don't know.

Q. Is it in Florida?

A. I wouldn't know, sir; I couldn't tell you.

Q. Is the Crockett in Florida?

A. I couldn't tell you that either.

Q. You mentioned getting in goods in pool car shipments?

A. Yes, sir.

Q. Do you also get in less than car load shipments?

A. Yes, sir.

Q. How are they delivered to you?

A. Partial unload.

Q. Isn't the partial unloading done in the case of the pool car shipment?

A. That would be a partial unload, a pool car would be a partial unload car.

Q. Does the railroad some times make deliveries by use of trucks some times?

A. Only on local shipments.

Q. I am not talking about the deliveries that you make to your customers but on goods coming to your ware-

house—do you get some goods incoming by rail which are sent to you by the railroad on truck?

A. Yes, sir.

Q. Are they called less than car load shipments?

A. Yes, sir.

Q. How frequently do you get shipments of that sort?

A. Oh, I would say two or three times a week.

Q. How often do you get in these pool cars for partial unloading?

A. It is according to about how the cars come in; we have two cars this week and we may not have a car next week at all.

Q. Is two a week unusual?

A. Yes, that is unusual.

Q. What is usual?

A. Maybe one car and maybe one car every two weeks.

Q. How often do you get a full car load?

A. Once a month.

Q. Where is that from?

A. Jacksonville.

Q. You know that?

A. Yes, sir.

Q. You know when they come from Jacksonville?

A. Yes.

Q. But you don't know when they come from any where else?

A. Yes, sir, because that is a car load of bags, and they have everything in it.

Q. Do you generally have more business down there in the Winter or in the Summer?

A. In the Winter.

Q. Do you, therefore, receive more goods in the Winter or in the Summer?

A. Winter.

Q. Approximately how many less than car load shipments do you receive in the Winter?

A. Oh, I would judge about one and a half times as much as we would through the Summer time.

Q. Does that also go for the car load shipment too?

A. The car load shipments come once a month, you can figure on them once a month.

Q. Without reference to Winter or Summer?

A. Yes, sir.

Q. Does your statement as to time and a half hold true for the pool car shipments?

A. Yes, sir.

Q. In addition to the deliveries of the kind that we have mentioned, do you some times get goods in that have come all the way by truck line?

A. We get some mops and brooms that look like they might have come all the way from Atlanta.

Q. How often do you get them?

A. Three or four times a year, maybe, and maybe once every three months.

Q. By what truck line?

A. By the Central, usually.

Q. What trademark or tradename is on those mops or brooms?

A. To tell you the truth, I have not paid any attention to a trademark on them; there are a dozen brooms there, and if it had a trademark on it, I couldn't tell you, to be truthful.

Q. You check in all goods against the invoice, don't you?

A. Against the freight bill; I do not check it against the invoice.

Q. You check it in against the freight bill?

A. Yes, sir.

Q. Does the freight bill show the point of origin?

A. It shows the point of origin, yes.

Q. Is it from the freight bill that you got the impression that the goods came from Atlanta?

A. That is right.

Q. When you are unloading these pool car shipments in these pool car shipments in these partial unloadings, do you have any shipping document to check them against?

A. No, sir.

Q. What do you check them against?

A. I check them on a pad and I check what I receive into the receiving book and I turn it into the office and the gentleman in the office takes care of the balance from then on.

Q. From the time you began the unloading of the pool car, do you understand that you have no information or list of what you are to take out of that car?

A. I have the usual list, yes, sir.

Q. What sort of a list?

A. A written list.

Q. Furnished you by whom?

A. By Mr. Norvell. To answer that more specifically, if we get a pool car of paper in, I get so many rolls of 18 inch paper and so many rolls of 15 inch paper, and I write it down on a slip of paper and take it to the car and it is checked according to what he has given me and they check against his invoice.

Q. You say that you write that down on a piece of paper—is that the information supplied you by the cashier?

A. Yes, sir.

Q. What does he supply you from that?

A. From the invoice, I think.

Q. You are not given the invoice?

A. No, I am not given the invoice.

Q. What happens if it doesn't check?

A. We have to check it over.

Q. What if it doesn't finally check?

A. Finally, if it doesn't check, then there is a shortage or overage made of whatever the item is—it is either over or short.

Q. Do you get any goods sent by express?

A. Yes, sir.

Q. How frequently?

A. Oh, maybe once every week or maybe once a week or two—once every two or three weeks and maybe it might come in two or three times a week, according to how often the stuff comes through.

Q. Do you have any shipping document that you check that by when they come in by express?

A. The receiving book; everything goes into the receiving book.

Q. I am not talking about your entries that you make, but do you have any shipping document against which you check the contents of the shipment?

A. Do you mean like a packing list?

Q. Any kind of list?

A. Something to show the shipment should consist of so much goods of this and that?

Q. Yes.

A. No.

Q. Do the documents that you have indicate the name of the shipper?

A. I see no documents except the express bill.

Q. Yes.

A. Yes, sir, I see the express bill.

Q. And the express bill is a document?

A. Yes.

Q. And that shows the name of the shipper and the point from where shipped?

A. Yes, sir.

Q. Where do those express shipments come from?

A. They come from different parts of the State.

Q. Which parts of the State?

A. And out of the State, I would say, and from Jacksonville; we have quite a few express shipments from the Jacksonville Paper Company.

Q. More from there or more from outside the State?

A. More from outside of the State, because that is twine and stuff like that is made out of the State.

Q. Do you spend all of your time in connection with the unloading of shipments and in other warehousing duties?

A. And other warehousing duties, correct, I am the shipping clerk and, therefore, it is my duty to get out all orders, fill them and get them rolling, country and otherwise.

Q. In the unloading, do you yourself ever manually or physically take any part in that?

A. I have at times, when the boys would be pressed, I have jumped in and helped; I am not too good.

Q. Otherwise, are your duties confined to paper work and checking the goods against the list that you have or the papers that you have?

A. Yes, sir.

Q. How much of your time do you pitch in and help with the others with the unloading?

A. Maybe 30 minutes or something like that some times.

Q. A day?

A. Yes, that is on a car.

Q. When you are getting up orders or delivery to customers, do you yourself participate manually with the warehouse men?

A. No, sir.

Q. What do you do?

A. I tell him what to bring out and I see that he brings it up according to the way I want it.

Q. If the goods are being prepared for shipment by common carrier, do you prepare the shipping documents?

A. Yes, sir.

Q. And all other necessary papers?

A. That is right,—anything that goes with the order.

Q. If the goods are to be delivered by your truck, do you check the orders against the invoices—the invoice to be delivered to the customer?

A. Yes, sir, I check it, they are double checked; they are checked when the goods are brought and put in one stack, and it is loaded on the truck and then it is checked again—that is double checking.

Q. Do you do that checking?

A. Yes.

Q. Who prepares any new address labels or tags for goods to be delivered by common carrier?

A. I do; I address all labels.

Q. Did you ever get any twine from Bibb in Macon?

A. Yes, sir.

Q. By express?

A. Yes, sir.

Q. How often do you get twine from Bibb?

A. I would say maybe once every thirty days and some times once every sixty days.

Q. Is that twine plain or is it printed?

A. Most of it is plain.

Q. Do you get some printed from Bibb?

A. No, only colored twine.

Q. Do you get some printed twine from some other places?

A. The only printed twine is what we call a bar ribbon.

Q. Who furnishes that?

A. You will have to ask Mr. Norvell; I don't know.

Q. Who is that printed for,—what customers?

A. It is just for tying up stuff during Christmas time we have pink and white and blue and green, and that is what I meant when I said printed.

Q. Is it ever printed for any particular customers?

A. Oh, no, that is what I meant, it is really a colored paper twine, for wrapping purposes.

Q. I have a list of a number of items which I understand are some times specially printed for your customers and I want to go over it with you to see which one you are familiar with. Do you ever get in any specially printed cake boxes?

A. Cake boxes?

Q. Yes.

A. Yes, sir.

Q. Who supplies them?

A. The Jacksonville Paper Company.

Q. Are they made in Jacksonville?

A. Yes, sir.

Q. Did you ever get in any specially printed paper bags?

A. Yes, sir.

Q. Are they always bags which have been printed by Southern Industries?

A. That is right.

Q. Do you ever get in any specially printed paper bags that have been printed by other manufacturers?

A. No, sir.

Q. Do you ever get in any printed sales books?

A. Yes, sir.

Q. All of those are printed by the Baltimore Sales Book Company, are they not?

A. Yes, sir, that is right.

Q. In Baltimore?

A. That is right.

Q. Do you have many customers for them?

A. Well, quite a few.

Q. Are those goods regularly carried in stock?

A. No, sir.

Q. And do they come in printed especially for particular customers?

A. Yes, they do.

Q. When they come in, do you put them in stock?

A. No, sir, we ship them right on out.

Q. Immediately?

A. Immediately.

Q. Suppose that your truck is already gone on the north end of the run, or gone to the south end of your run and there is no truck there, then what do you do?

A. Well, if it is going down south to Delray, then when the truck goes down there, we try to make a trip there at least once a week, and we send it down there then, and if it comes in on Tuesday, then we hold them until Friday.

Q. Then, you don't send them out right away?

A. Not then, not those, but those that the common carrier carrys, we ship those out, right on out.

Q. But if it is your own truck that you send it out on, then you wait for the next regular run to that particular point before you send it out?

A. Yes, sir.

Q. And it might be as much as a week before you send it?

A. Yes, sir, maybe a week; there are two divisions there, of course.

Q. Do you ever receive specially printed gummed tape?

A. Yes, sir.

Q. Who furnishes that?

A. So far as I know, Southern Industries.

Q. Do you have many customers for it?

A. We have quite a few; more of that than we had previously.

Q. Does each order come in special?

A. Yes, sir.

Q. Do you ever receive specially printed clothing boxes?

A. We haven't any ways lately, no, sir.

Q. Have you in the past?

A. In the past?

Q. Yes.

A. No, we haven't, not since I have been there in two years, we haven't had any specially printed clothing boxes.

Q. Do you receive specially printed beverage napkins?

A. Nothing only the printed napkins, that is the design, like a boat, designed like that, you know.

Q. I show you here plaintiff's Exhibit No. 1 for identification.

A. Uh huh.

Q. Is that a type of specially printed napkin?

A. No, sir.

Q. Now, you just wait for my question before you start answering it.

Mr. Kurz:

Let the witness answer you, that is what he is trying to do.

Mr. Downing:

I haven't asked the question yet.

Mr. Kurz:

Don't yell at me about it, please. I can hear you.

By Mr. Downing:

Q. Is this the type of specially printed beverage napkin?

A. That would be the type.

Q. Do you have any customers for it?

A. We haven't had any specially printed. What we have just come through by the regular printed design, such as a cherry design or a sail boat design or a cocktail design or a rooster design, or something like that.

Q. Did you receive any specially printed guest checks?

A. No, sir.

Q. Do you ever receive specially printed millinery tape?

A. Any what?

Q. Any specially printed millinery tape?

A. No.

Q. For hat shops or millinery shops?

A. No, sir.

Q. What about specially printed shirt wrappers or shirt bands?

A. No, sir, we have never had any of those.

Q. Do you ever receive any special printed notion bags?

A. Yes, sir.

Q. How often do you have calls for those, how many customers?

A. We have quite a few orders now for printed notion bags.

Q. Who do you order those from?

A. From Southern Industries.

Q. In Jacksonville?

A. Yes, sir.

Q. You don't get them from anybody else?

A. No, sir.

Q. What about specially printed coffee bags?

A. We have some up there but what they are for, I don't know, or who prints them.

Q. Do you get any specially printed coffee bags?

A. We haven't since I have been there.

Q. Have you received any specially printed shipping tags for any customers?

A. No, sir.

Q. What about specially printed laundry boxes?

A. Yes, sir.

Q. By whom are they made?

A. They are made by Southern Industries.

Q. Do you know a particular kind of wrapping paper called ad wrap?

A. Ad wrap?

Q. Yes.

A. We have never used it.

Q. Have you had any customers for it?

A. I couldn't tell you; we haven't had any calls for it, not for ad wrap.

Q. Do you have a regular warehouse man there at the plant now?

A. A regular man that I keep there in the warehouse?

Q. Yes.

A. No.

Q. Who is your warehouse man?

A. I have a colored boy that is there and a white boy but he is not the regular warehouse man but he helps in the office.

Q. Who is that?

A. He helps me; that is Robert Burke.

Q. Does he help in the office?

A. Yes, sir, he helps in the office.

Q. What does he do in the office?

A. He writes tickets and waits on customers.

Q. In doing that, who is he helping?

A. Mr. Saunders.

Q. He is the cashier?

A. Yes, sir.

Q. Does he spend most of his time doing work in the office or most of his time helping you?

A. The busy part of the day.

Q. The busy part of the day?

A. Yes, sir.

Q. Helping Mr. Saunders?

A. Yes, sir, that is the early morning hours up to a little past noon and then he comes and helps me.

Q. Does he help you more or less than half the time?

A. About an equal amount.

Q. 50-50?

A. Yes, sir.

Q. When he is in the office, who is helping you in the warehouse?

A. The negro boy.

Q. Who is that?

A. That is James Hall.

Q. Is he one of the truck drivers?

A. Yes, sir.

Q. Does James spend more or less than half of his time driving the trucks?

A. Well, it is about equal, about 50-50.

Q. Is it correct to say when Burke is helping Mr. Saunders, Hall is helping you?

A. Hall is helping me, yes, sir, and when Hall goes out on a trip, then Mr. Burke takes over in his place and helps me.

Q. Is there ever any over-lapping there when you will have both Burke and Hall helping you?

A. Oh, yes.

Q. How often does that happen?

A. Not very often, only when we have quite a few orders to get up for the country, Burke can write the labels for me and the other boy can get up the orders if we get behind; Burke can write the bills of lading and I can write the labels and, therefore we help each other.

Q. Are most of these specially printed items that we have been talking about for delivery by your own truck or for delivery by common carrier?

A. Most of them that are coming in now are delivered by common carrier because they are out of the jurisdiction of our truck.

Q. And in all of those cases, it is necessary to prepare them for shipment?

A. That is right.

Q. Is there a truck driver named Abe?

A. Yes.

Q. Abe what?

A. Abe Wilson.

Q. Does he spend more or less than half of his time driving?

A. He does.

Q. Does which?

A. He spends more, more time driving.

Q. Does he spend the remainder of his time helping you in the warehouse?

A. That is right.

Q. How often do you employ extra labor for unloading?

A. We haven't employed any extra labor in two or three months.

Q. Go back behind that—how often had you employed extra labor before that time?

A. Well, about that time, we would get a man today and he would be gone tomorrow, and we would get a man the next day and he would be gone the next, and so it was just on and off.

Q. But I am asking you about extra labor now and not warehousemen.

A. That is extra labor along with it; we got the man and we didn't keep him; he would be no good and we would get rid of him.

Q. For what occasion did you ordinarily employ the extra labor?

A. Whenever we got a full car of bags.

Q. Only then?

A. Yes, sir.

Q. That would be once a month?

A. Yes, sir,—for a partial unload, we don't use any extra help.

Q. Who is your boss?

A. Mr. Norvell.

Q. Is Mr. Saunders your boss?

A. I wouldn't think so.

Q. Do you have the authority to hire or fire, Mr. Burke?

A. Yes, I would.

Q. Did you hire him?

A. No, sir.

Q. Can you fire him?

A. Yes, sir, I could fire him.

Q. How do you know you can?

A. Well, by the authority of the man above me.

Q. Did you hire Abe Wilson or James Hall?

A. No, sir.

Q. Can you fire them?

A. Yes, sir.

Q. How do you know you can?

A. By the authority of the man above me.

A.[Q.] You mean if Burke or Hall or Wilson, if you felt they were unsatisfactory, you would take that up with the man above you?

A. If they wouldn't do what I wanted them to do, I have the authority to fire them; that is my authority.

Q. Providing Mr. Norvell will approve it?

A. I don't have to ask Mr. Norvell.

Q. Have you fired anybody besides the extra labor?

A. Yes, sir, I have fired three or four extra fellows, negroes.

Q. What were they doing?

A. They were truck drivers.

Mr. Kurz:

I object to that. He said that he had the authority.

The Witness:

And they wouldn't get their orders up and put stuff back and wouldn't deliver it, and naturally, I wouldn't want help of that kind, and when Mr. Norvell came back in, I would tell him that I did so and so and had fired so and so, and he would say that is O. K.

By Mr. Downing:

Q. I believe you said that during the time that Burke is helping Mr. Saunders, James Hall is helping you?

A. Yes.

Q. And that is about one-half of the time?

A. Yes.

Q. And after Burke comes back into the warehouse to help you, does Hall then take his delivery truck out?

A. He takes his delivery truck out.

Q. Does he stay out until quitting time or does he get back some time before quitting time.

A. He gets gack before quitting time.

Q. What does he do then?

A. He cleans up the warehouse and stacks freight and this and that and the other.

Q. In other words, he just does warehouse work then?

A. That is right.

Q. On the average, how soon does he get back in from his runs before quitting time?

A. It is according to how many miles he has to travel.

Q. I understand that.

A. That usually takes two to three hours for him to unload.

Q. On the average—if you can average it—can you state what an average time would be for getting back in?

A. His average time, if he had a full load, he should be back in two or two and a half hours.

Q. Then he spends, roughly, two or two and a half hours a day on the average in driving?

A. That is right.

Q. How much time does he spend in loading his truck or loading other trucks?

A. Quite a little bit. He helps load the other trucks and then helps load his own truck.

Q. In speaking of loading, I am not referring to the wheeling of the goods from the warehouse to the truck but the actual placing of the goods on the truck?

A. That is right.

Q. How much times does he spend in loading a full truck?

A. We can load a full truck in less than thirty minutes time.

Q. Without regard to how much time it takes him, how much time does James Hall spend on the truck placing the goods?

A. Unless he takes a load out himself, he doesn't place them; Abe Wilson places them.

Q. James only places on his own truck?

A. Yes, sir.

Q. And that takes how long?

A. About 30 minutes.

Q. He spends two to two and a half hours driving a truck?

A. Yes, sir.

Q. And spends only about 30 minutes placing goods, for loading on the truck?

A. Yes, sir.

Q. Can you state whether Burke spends more or less than one half his time helping you?

A. It is about 50-50, sir.

Q. That is as close as you can come to it?

A. That is as close as I can come to it; he is busy there at the counter pretty much of his time.

Q. How much of his time is Abe Wilson out on his truck making deliveries?

A. Abe is usually out except Wednesdays, and on Wednesday pretty near everything in this town is closed up in the Summer time; Abe will be out on his truck seven hours out of the nine hours.

Q. Does he go out Saturday?

A. No, sir.

Q. Does he go out Saturday?

A. No, sir.

Q. Do you remember when the Wage and Hour Inspector, Mr. Charles R. Carter, was down to see you and you made an inspection last October?

A. Who was that?

Q. Mr. Carter, the Wage-Hour Inspector?

A. Yes, sir.

Q. And do you remember he talked with you then?

A. Yes, sir.

Q. Do you remember that he prepared a written statement then that you signed?

A. That is right.

Q. And he also talked to other employees, didn't he?

A. We only had one other employee at that time.

Q. Did he talk to him, so far as you know?

A. Yes, sir.

Q. Do you recall then what you said to Mr. Carter about getting merchandise from all over the country?

A. Well, yes.

Q. What did you say?

A. Yes, partial unload cars.

Q. What did you say to him then?

A. I can't tell you exactly.

Q. I will hand you a written statement and ask you if that is your signature?

A. Yes, sir.

Q. I direct your attention to this statement and I will ask you if that will refresh your memory: "It will average at least a car a week. They come pretty much from all over the United States"?

Mr. Kurz:

I object to the question on the ground that it is an attempt to impeach his own witness and no sufficient predicate has been laid.

By Mr. Downing:

Q. Does that refresh your memory about what you told Mr. Carter?

A. That is right.

Q. Did you tell him that?

A. Yes.

Q. Is it true?

A. At around that time we were getting just around a car a week.

Q. And from all over the United States?

A. From all over the country, partial cars, napkins, toilet paper, roll paper and stuff of that description and paper things.

Q. Why didn't you tell me that when I asked you about it in the earlier part of the examination?

Mr. Kurz:

I object to counsel arguing with his witness.

Mr. Downing:

I will withdraw it.

By Mr. Downing:

Q. Mr. Carter was there in October, was he not?

A. Yes, sir.

Q. In fact, is this statement dated October 5?

A. October 5.

Q. Was that or not before the Winter season set in?

A. That was before the Winter season started.

Q. And as I understood your testimony previously, during the winter you received more goods than earlier?

A. That was before our Winter season started; our Winter season does not start until around December.

Q. I see. And earlier on cross examination did you or not testify in the Winter months you get more goods during the Winter months, than in other months?

A. I guess so.

Cross Examination.

By Mr. Kurz:

Q. In October and November, do you get in your supply of merchandise for the Winter season?

A. Most of our stock, we will get stocked up for the Winter season during that time.

Q. Whose duty is it to keep the record of the merchandise in the warehouse down there, check the goods in and out and see that they balance?

A. I check them in out of the cars but I don't check them against the invoice; that is not my duty.

Q. Is it your duty to see that the merchandise that comes into the warehouse is accounted for?

A. Yes, sir.

Q. You testified about shipments that are delivered —less than car load shipments that are delivered by the railroads,—do the railroads deliver them and unload them into the warehouse?

A. Yes, sir, with our help.

Q. Who unloads them on to the platform or into the warehouse?

A. Lots of times, we do ourselves.

Q. From the railroad truck?

A. No, from the carrier; you see that is hauled by trucks though.

Q. I don't know that you and I are talking about the same thing. When you get less than car load shipments that come by railroad to West Palm Beach, I understand they are delivered to you by a truck operator by or for the railroad?

A. That is little small shipments like local shipments, yes, sir.

Q. Yes?

A. Yes, sir.

Q. Who unloads those shipments?

A. Who unloads it into our warehouse?

Q. Yes.

A. Our boys will, lots of times, pitch in and help him if he had a hundred cases of paper cups or stuff like that, the boys will pitch in and help him unload it.

Q. How long will it take to unload a hundred cases of paper cups?

A. Maybe about 15 minutes where it would take the deliveryman on the truck maybe 30 minutes, the deliveryman on the truck.

Mr. Kurz:

That is all.

The Witness:

We have a kind of policy of helping the other boys out too and lots of times he helps us out, and, therefore, we help one another.

Mr. Kurz:

That is far enough.

Re-Direct Examination.

By Mr. Downing:

Q. Do you have a platform at your warehouse where goods are received?

A. No, sir.

Q. The goods from the freight car or from the truck are loaded directly on to the floor of the warehouse?

A. Yes, sir, on to the floor.

Q. And I understand always in the case of rail cars, your men unload them into the warehouse?

A. Yes, sir.

Q. And sometimes when the trucks come there, they help the truck driver unload them?

A. Yes, sir.

Q. In all cases after they are placed on the warehouse floor, do you leave them there or do you have to handle them again and carry them back?

A. Yes, sir, we have to handle them again and carry them back and put them in stock.

Q. Where do you put the special shipments when they come in?

A. What is that?

Q. Any special printed items?

A. That goes direct to the shipping room.

Q. That goes direct to the shipping room?

A. Yes, sir.

Q. And stays, as I understand it, if they are going out on your own truck, how long?

A. They may sit there as long as six days.

Q May sit there as long as six days?

A. Yes, sir.

Q. Or they may go out immediately?

A. Yes, sir, or they may go out immediately.

Q. What is the schedule of hours there at the warehouse?

A Are you referring to the help or to myself?

Q. Both.
A. Mine is 35 per week straight.
Q. I was asking you about the schedule of hours.
A. The hours is eight o'clock to twelve and one to six.
Q. And on Saturdays?
A. It is twelve to one.
Q. An hour out for lunch every day except Saturday?
A. Every day except Saturday.
Q. And that is how many hours?
A. 50 hours a week is what you will find there.
Q. Do you yourself always confine your work to that particular schedule?
A. Yes, sir.
Q. Exactly?
A. Yes, sir.
Q. Do you recall when you told Mr. Carter about that?
A. No.
Q. Don't you recall what you told him?
A. No.
Q. Do you recall your estimate to him as to the total number of hours per week that you worked?
A. 50 hours is what I told him because I draw a straight salary.
Q. I will ask you again to refer to the written statement that you have previously referred to and see if this will refresh your memory?

Mr. Kurz:
Same objection as heretofore made.

The Witness:
What has he got here—53?

By Mr. Downing:
Q. Read it.
A. At that time, sir, I was putting in more than 50 hours a week because we didn't have the help and I was

working right straight through the noon hour and I didn't take the noon hour. That schedule I gave you here is the agreement I was supposed to work on; at that particular time, we didn't have the help.

Q. And you didn't take your full noon hour?

A. No, sir.

Q. You don't sign a daily time sheet?

A. No, sir.

Q. Was that the rush season of the year, or does the rush season come later in the Winter?

A. The rush season comes later in the Winter, but this year it has been rushed all the way through.

Q. When the rush season came on after Mr. Carter left there, did you work more or less than 53 hours that you told him about?

A. We had to put on extra men; the extra hour there helped Mr. Saunders to relieve the pressure.

Q. How many hours did you work after that?

A. Nine hours a day.

Q. What was your total per week?

A. I take my noon hour off now.

Q. During the time that you were doing all those extra hours and didn't take your noon hour off, were the other warehouse employees working the same hours as you did?

A. No, sir.

Q. How was it that you happened to let them off—you were working?

A. They went to lunch, they took their full noon hour when I didn't.

Q. Over how long a period was it that you didn't take your full noon hour?

A. Oh, Lord, I don't know how long it was, I couldn't tell you exactly.

Q. Was it weeks or months?

A. It was months there that I didn't take the full noon hour.

Q. Have you ever worked fewer hours than the normal schedule, the 50 hours a week?

A. No, sir.

Q. You always worked the full schedule?

A. Yes, we always worked the full schedule.

Q. What about weeks when holidays occurred?

A. When holidays occurred, we didn't work.

Q. Did you ever take any time off?

A. I have had one week off.

Q. Did you ever get to take any days or afternoons off, any other days?

A. No, sir.

Q. Do you get a bonus?

A. Yes, sir.

Q. How long have you gotten that?

A. Since June 1 of last year.

Q. How many holidays a year do you get?

A. Well, we get July—

Q. July 4th?

A. Yes, sir, we get July 4th, we get Labor Day, we get Christmas, we get New Year's—

Mr. Downing:

That is all.

Mr. Kurz:

That is all.

Mr. Downing:

Thank you.

(Witness excused.)

Mr. Downing:

Does the last witness waive the reading and signing of this deposition?

The Witness:
Yes, sir.

Mr. Downing:
May it be agreed and stipulated between counsel for the respective parties that the reading and signing of the depositoin by the last witness is hereby waived by the parties hereto?

Mr. Kurz:
That is agreeable.

Thereupon, FRED L. SAUNDERS, called as a witness on behalf of the plaintiff, after being first duly sworn by the undersigned Notary Public, in answer to questions propounded, testified as follows, to-wit:

1048 Direct Examination.

By Mr. Downing:
Q. You are Mr. Fred L. Saunders?
A. Yes, sir.
Q. You are cashier of the East Coast Paper Company?
A. Yes, sir.
Q. How long have you been cashier?
A. Around 14 months, I believe, now.
Q. Were you down there last October?
A Yes, sir.
Q. When Mr. Charles L. Carter, the Wage-Hour Inspector came by to make a wage-hour inspection?
A. Yes, sir.
Q. Did he talk to you in general about the kind of business being done by the branch and where you got your goods from and whom you sold them to?
A. Yes, sir.

Q. During his inspection, did anyone, did you receive any directions from anybody not to give any information to Mr. Carter?

A. Not to give any?

Q. Yes, sir.

A. No, sir, not to give any information to Mr. Carter.

Q. Did you see any letters from the Jacksonville office with reference to that subject?

A. If I remember right, they wrote a letter that he woud be down to interview us that is all they said.

Q. What instructions did they give you about giving him information?

A. I don't believe they said anything about that.

Q. As a matter of fact, you did give him information, didn't you?

A. Yes, sir.

Q. Well, it is the same information I want to go into now, Mr. Saunders. Do you get any goods from the Southern Industries Company in Jacksonville?

A. Yes, sir.

Q. Do you get other goods from other manufacturers?

A. Yes, sir.

Q. Other than Southern Industries, are any of those manufacturers located in the State of Florida?

A. I believe all of them are out of the State except it seems we got some paper one time shipped from Orlando, —I don't know how it came about.

Q. Wasn't that just a transfer from the Orlando branch?

A. I don't know whether it was or not, but we got one shipment from there and one shipment of boxes from the Miami branch.

Q. Was that from the Miami branch?

A. Yes, sir, I remember the freight bill said from Miami.

Q. Other than those occasions that you have mentioned, does all of your goods come either from Southern Industries or from out of State manufacturers?

A. Yes, sir.

Q. Can you state what proportion of your goods are received from Southern Industries?

A. We order a very small percentage; they only manufacture the bags and the printed bags and the boxes and stuff like that.

Q. Were you down there when Southern Industries used to manufacture brooms?

A. No, sir.

Q. You didn't know that at one time they manufactured brooms?

A. I knew they did, but I didn't work for them then.

Q. Can you state what proportion of your goods does not come from Southern Industries?

A. Well, that is mighty good to do; it is hard to get merchandise; if we could get it regularly like we wanted it, I could have it on the tip of my fingers, but as it is, I don't know.

Q. Do you get more goods or less goods from Southern Industries than when you first went there?

A. I don't see much difference.

Q. Do most of your goods come from out of State manufacturers?

A. Yes, sir.

Q. How are they shipped to you?

A. By freight and partial cars mostly; we have to get cars sometimes from Jacksonville, Daytona and Miami, we have to take a split car for those three branches, but that mostly comes by car—what we call a pool car or stop-over car.

Q. What branches do you usually split with?

A. Usually Daytona and Miami and here and sometimes Jacksonville takes out some goods.

Q. Does that car ever come through Orlando?

A. Not that I know of.

Q. Usually, the car stops first at Daytona?

A. Yes, sir.

Q. And then it comes to West Palm Beach?

A. Yes, sir.

Q. And then it goes on to Miami?

A. Yes, sir.

Q. Do you ever get any full car load shipments?

A. I don't believe we have since this schedule has been on; I don't believe we have got a solid full car except from Jacksonville.

Q. Do you get full cars from Jacksonville from Southern Industries?

A. Yes, sir.

Q. How often?

A. About once a month is about as often as we can figure on it; we usually get a mixed car of bags a month.

Q. Do you get goods from Southern Industries other than in car load lots?

A. Occasionally a special order they wire for, or a drop shipment or an emergency.

Q. When you say a drop shipment, is that a shipment that Southern Industries ships directly to your customers?

A. Yes, sir, that has been done.

Q. Do you get any less than car load shipments from Southern Industries?

A. Except special orders in emergency; I remember a few times when bakeries were out of bags, we ordered them specially and a few times when cleaners were out of bags, we ordered specially, but that doesn't happen often.

Q. Do you get any full truck shipments from Southern Industries?

A. No, sir, not full trucks, but we got some shipments by truck from them.

Q. Do you get any express shipments from Southern Industries?

A. I don't believe we got one except a trip shooting machine that we had, and we wired for it because we had an urgent call for it, and we wired for it.

Q. As cashier, are you at all familiar with the price book?

A. Price book?

Q. Yes, sir.

A. Yes, sir.

Q. As cashier, do you frequently take orders from customers who call by the office or warehouse?

A. Yes, sir, when the others are gone; I usually have as much as I can do.

Q. And in taking those orders and in preparing the invoice, which I understand is simultaneous, do you find it necessary to refer to the price book to enter the price or charge?

A. Yes, sir, occasionally; most of the prices I remember.

Q. Did you have a fine paper department in this branch?

A. No, sir.

Q. You only have a coarse paper department?

A. Yes, sir.

Q. Does this branch take orders for fine paper?

A. Not since I have been there.

Q. Is it the coarse paper price book that you have been referring to?

A. Yes, sir.

Q. Can you state, in a general way, about how many items are listed in that book?

A. That would be hard to do; we have a lot of items listed in there that we haven't been able to get in the past two years.

Q. Does it run into the hundreds?

A. Yes, sir.

Q. Does it or not run into the thousands?

A. I would hate to say; it is a large book, and we have prices in there, and we take special orders for them that we don't carry in stock.

Q. Do you carry in stock even all of the items that you have in the price book?

A. No, sir.

Q. And in addition to the price book, the items listed in the price book, do your customers sometimes order from you goods not listed in the price book?

A. Yes, sir, they do.

Q. What do you do about that?

A. Sometimes they bring a sample in and we handle them that way—that doesn't come within my department, but I happen to know how they handle them—they handle them the best way that they can, and usually they didn't get it in the last few months.

Q. Is it your custom to place orders for the special orders?

A. I have nothing to do with the orders.

Mr. Kurz:

I object to it because the witness has said he doesn't know.

By Mr. Downing:

I am inquiring about your knowledge. Is it the practice of the branch to place orders for special goods which their customers order from you?

A. Yes, I think it is, but I don't have anything to do with the ordering part of it.

Q. I understand that. Isn't it a part of your job to file the invoices?

A. Yes, sir.

Q. And it is a part of your job to charge the goods to your customers' accounts when it is delivered?

A. After it is delivered, yes, sir.

Q. It is a part of your job to send out the monthly statements to your customers covering those special goods?

A. Yes, sir, monthly and weekly.

Q. Now, what are some of those special goods which you sometimes order for your customers not listed in the price book?

A. Well, since I have been here, I have seen all kinds of samples that I wouldn't even know where to think about ordering them from; they would be something they got up north and some in foreign countries; I think too, that I know nothing about; usually the salesmen or the manager handles that.

Q. I am asking you about those that you do actually order for your customers that you handle the invoice on and post the account on and send out the statements.

A. What is the question?

Q. What are the types of special goods that you order for your customers which are not listed in your price book?

A. It is usually printed goods.

Q. Is it nor not true that the price book lists a number of specially printed goods?

A. Yes, sir.

Q. Are there, in addition, other printed items not listed in the price book?

A. Well, I can quote one thing that happened recently that I have never seen a price on.

Q. What is that?

A. One of these flower growers sent us a certain kind of box that they wanted to buy some of them, and I never saw any like it before, and whether they ordered it, I don't know.

Q. You did not later see any invoice on that?

A. No, sir.

Q. Have you sent out any invoices to customers or statements to customers covering specially printed sales books?

A. Sales books?

Q. Yes, sir.

A. Yes, sir.

Q. How many customers do you have for whom you have sent out such orders, invoices or statements?

A. Well, I don't know but we have several customers, I don't know just how many.

Q. Who supplies you with the printed sales books?

A. I believe they usually come to Baltimore.

Q. As a matter of fact, do you know of any place that they do come from except Baltimore?

A. Well, I have known them for years back to come from out west; I was in business myself and bought some.

Q. Since you have been with the East Coast Paper Company, have they received printed sales books from any other place than Baltimore, than the Baltimore Printed Sales Book Company in Baltimore, Maryland?

A. I don't recall of any other place, at the time being.

Q. Have you handled the clerical work and posted the accounts on any items of specially printed gummed tape?

A. Yes, sir.

Q. Do you have many customers for that item?

A. Quite a few.

Q. How often do they order that item?

A. Quite a few.

Q. How often do they order that item?

A. Some of them order it in large quantities at a time and don't order it very often, and some of them order in smaller amounts.

Q. Who supplies that item?

A. I believe what we recently got is from the Central Paper Company from Menasha, Wisconsin.

Q. From Menasha, Wisconsin?

A. Yes, sir.

Q. Have you done any clerical work or sent out any items or done anything about any special printed beverage napkins?

A. Beverage napkins?

Q. Yes, such as Plaintiff's Exhibit 1 that I show you?

A. No, sir, I don't believe I have sent out any invoices for any printed napkins like this (indicating); if it has been, it has been a long time back and I don't remember it; we do handle beverage napkins but they are not specially printed; I don't remember handling any special printed beverage napkins since I have been there.

Q. Have you handled any items as to specially printed dry cleaning bags?

A. Yes, sir.

Q. Who furnishes those to you?

A. Southern Industries.

Q. Have you handled any item covering any specially printed laundry boxes?

A. I don't believe we have handled any laundry boxes printed since I have been with them.

Q. Have you handled any items covering specially printed paper bags?

A. No, sir, I don't think we have handled any specially printed paper bags.

Q. Have you handled any items covering specially printed cake boxes?

A. I don't recall that now.

Q. Do you recall your discussions with Mr. Carter about those items, the cake boxes and laundry boxes and specially printed bags?

A. Yes, sir.

Q. Do you recall what he asked you about those?

A. No, but he asked me about the same as you are and how the company handled all of that stuff, but they

had not been able to get the goods delivered, I knew they handled them, but they couldn't get them.

Q. Did you not tell him that those were furnished by Southern Industries?

Mr. Kurz:

I object to that.

The Witness:

All I remember handling was furnished by the Southern Industries.

By Mr. Downing:

Q. Were they specially printed?

A. Yes, sir.

Q. You do remember it now?

A. I don't remember any bags we have had printed since I have been there.

Q. Do you remember any millinery bags specially printed?

A. I don't believe we ever had any millinery bags specially printed; we could get enough of the blank ones since I have been with them.

Q. Do you recall any specially printed millinery tape?

A. Specially printed millinery tape?

Q. Yes.

A. I don't know what kind that is.

Q. Do you receive any specially printed tape from the General Printed String Company?

A. That is not specially printed though.

Q. Do you sell any millinery tape that comes in on spools?

A. We call it ribbons, I guess.

Q. Ribbons—Is any of it specially printed

A. I don't remember receiving any since I have been there.

Q. Do you recall any specially printed shirt wrappers or shirt bands?

A. No, sir.

Q. Or what about any specially printed notion bags?

A. I don't know that we have handled any; I know years ago we have handled that.

Q. Only while you have been with this Company?

A. I don't think we have handled any like that.

Q. Confine your statement to what this company has handled since you have been there.

A. I know they do sell those things but I don't remember them getting any like that.

Q. Do you remember handling any items as to any specially printed shipping tags?

A. No, sir.

Q. What is ad wrap?

A. Ad wrap?

Q. Yes,—ad wrap, do you know what that is?

A. No, sir, I don't.

Q. Do you know whether you handled any specially printed wrapping paper, specially printed for the customer with his or her name or label on it?

A. I don't remember any specially printed thing like that coming in since I have been there.

Q. Is your routine for the handling of the clerical work on the special order items any different from your routine for handling the clerical work on stock items?

A. No, sir; it is all the same; it goes through the same kind of invoices and it is charged in the same ledger.

Q. Does it take any more time or any less time to handle or enter the special order items than it does the stock items?

A. Usually when I get the invoice, it is already written up, and it is the same for me to handle as any other invoice.

Q. It takes the same amount of time?

A. Yes, sir, I verify all invoices, and I can verify one as well as the other.

Q. What does Mr. Burke do for you?

A. Burke?

Q. Yes.

A. He does most everything; he drives a truck.

Q. No,—assisting in the office?

A. He answers the telphone mostly.

Q. What part of the day does he spend in the office helping you?

A. That depends on how busy I am on other things, and it wouldn't be the same every day.

Q. How much of the time is Mr. Norvell in and around the office?

A. That is not the same every day; sometimes he is there a half a day and sometimes he is not there two hours.

Q. Generally, does Burke help you in the morning or in the afternoon?

A. Generally when I need him most.

Q. Generally, when do you need him most?

A. Generally, I need him most in the morning.

Q. Is that generally when he helps you most?

A. Yes, sir.

Q. Does he take orders from the trade?

A. Yes, sir.

Q. Does he write up the invoices or prepare the invoices?

A. Yes, sir, he writes the invoice or order.

Q. That is in quadruplicate?

A. Yes, sir.

Q. The order and the invoice is the same thing?

A. Yes, sir.

Q. Does he assist you in any other particular work?

A. Once and awhile I get him to separate some of those copies when I am busy with other things, and oc-

casionally I get him to address a few envelopes and mail out the invoices when I am too busy.

Q. Does that include mailing the mail to the Jacksonville office?

A. No, he doesn't have anything to do with the Jacksonville mail.

Q. Does he use the typewriter?

A. Well, he uses it, but very slowly; he usually writes it in long hand.

Q. Do you use the typewriter?

A. Yes, sir.

Q. Do you write the letters or does Mr. Norvell write them?

A. We both do,—anything pertaining to his part of the job, he writes, and pertaining to mine, I write.

Q. To whom do you write?

A. To whomever it is necessary.

Q. To the Jacksonville office?

A. Yes, sir, to the Jacksonville office, and I write people about invoices.

Q. Do you ever write to out of state manufacturers?

A. No, sir, I have not.

Q. Following up shipments?

A. No, sir.

Q. How do you follow up shipments?

A. I don't have anything to do with that; I don't trace them.

Q. Do you have any customers who order a season's supply at one time of a certain item—any item?

A. I am not in a position to answer that; I don't know what the season's supply is.

Q. Do you have a customer who orders a million napkins at one time—an ice cream company or milk company, customers like that?

A. I know they order large quantities at one time, but I don't know the amount.

Q. Do you recall posting charges for a million napkins for the ice cream and dairy company?

A. I don't know the amount, but I post quite a large order for them at times, but I don't remember the amount.

Q. Do you have any customers for whom you hold goods in stock until such time as they may want delivery?

Mr. Kurz:

I object to that because it is not shown that the witness has anything to do with the warehouse activities or has any knowledge of that matter.

By Mr. Downing:

Q. Go ahead and answer it. You have to answer it.

A. Hold merchandise for delivery as people want it?

Mr. Downing:

Read him the question, Mr. Reporter.

(Question read.)

The Witness:

I don't remember anything like that—all I know is if it goes out in an invoice I know it, and I don't know if it has been done that way or not.

By Mr. Downing:

Q. Are there any cases where you charge the customers a large order or supply and the goods are delivered piecemeal as they request them?

A. I don't know anything like that. Usually we get it as fast as they can get it—since I have been here it has been so scarce.

Q. Have you handled any items relating to specially printed ice cream cups?

A. No, I don't know; I know we have handled ice cream cups but I don't know whether specially printed or not.

Q. Have you handled any specially printed bottle caps?

A. We have handled bottle caps, but I don't know if they were specially printed or not.

Q. Dairies frequently do use bottle caps with their name specially printed on it?

A. Maybe so.

Mr. Kurz:

I object to it on the ground as to what is generally done is wholly immaterial, incompetent and irrelevant.

By Mr. Downing:

Q. Do you have any customers to whom you now recall posting items of that sort, specially printed bottle caps or washers?

A. I don't remember whether it is specially printed or not, but I do remember posting some of those items.

Q. Do you recall posting any of those items to your ice cream or dairy customers covering specially printed containers, ice cream containers?

A. I remember posting some containers but whether specially printed or not, I don't know.

Q. Do you get a bonus, Mr. Saunders?

A. Yes, sir.

Q. How long have you been getting it?

A. Since the 1st of June, 1945.

Q. Is it payable once a month?

A. Yes, sir.

Q. How much is your salary?

A. $43.50 a week.

Q. $43.50. Has it been that during your entire employment? Has it been that the entire time of your employment?

A. No, the first few months, it was $41.15, and it was increased to $43.50.

Q. How much bonus do you get once a month?

A. Up until this June, it was $4.79 a month, I believe, net, that I get—no, $3.79 net, and this 1st of June, it increased.

Q. To what?

A. I haven't got my check yet but it will be 20 per cent above $43.50—20 per cent per month.

Q. Do you know, as a matter of fact, that your bonus is paid on your last year's earnings?

A. Yes, sir.

Q. When did you go to $43.50?

A. I believe it was in April or May, 1945.

Q. So you have been getting that over a year?

A. Yes, sir.

Q. If your correct then, your monthly bonus you would be getting now would be $8.70 per month?

A. No, per week.

Q. Your bonus is payable—

Mr. Kurz:

20 per cent of the weekly salary.

The Witness:

Yes, sir, that is right, 20 per cent on the weekly salary.

By Mr. Downing:

Q. And before it was $3.79 a month?

A. $3.79 per week; it would be 20 per cent increase this time.

Q. Did Mr. Carter talk with you with regard to your hours that you were working?

A. Yes, sir.

Q. And you told him?

A. Yes, sir.

Q. How many hours did you tell him that you have been working on an average per week?

A. We are supposed to work 50 hours per week.

Q. How many did you tell him you had worked?

A. When it is necessary, I stay and work until I get through with my work.

Q. What did you tell him about your average, do you remember?

A. I don't remember; sometimes nights I work there until ten or eleven o'clock and sometimes I work Saturday afternoon until seven or eight after we close. The company doesn't require it, but I do that voluntarily.

Q. Did you ever work on the average of 60 hours per week?

A. Yes, sir, I have made 60 hours a week.

Q. 60 hours per week?

A. Not at the company's request—at my own.

Q. I understand that, but over how long a period of time?

A. That is hard to say.

Q. Over a period of weeks or months?

A. I expect both. When I don't have anything important to do, nothing special to do, which I usually don't, but if I have important work to do, I do it myself.

Q. Nobody else stays there and works with you?

A. No, sir.

Q. Nobody else stays there and works with you?

A. No, sir, except unless Mr. Norvell stays with me; sometimes he stays to get off a special balance.

Q. Nobody stays on the job but you?

A. No, sir.

Mr. Downing:
That's all.

Mr. Kurz:
No questions.

Mr. Downing:
That is all. It is agreeable with the witness that the reading and signing of this deposition by the witness is waived?

The Witness:
That is agreeable.

(Witness excused.)

Mr. Downing:
It is hereby agreed and stipulated between counsel for the respective parties that the reading and signing of the deposition by the witness is hereby waived by the parties hereto, through their counsel,—is that agreeable to you, Mr. Kurz?

Mr Kurz:
That is agreeable.

Mr. Downing:
And it is so stipulated?

Mr. Kurz:
And it is so stipulated.

Thereupon, the taking of testimony was closed.

The State of Florida,
County of Palm Beach.

I, C. E. Jones, Notary Public, State of Florida at Large, duly commissioned and qualified and authorized to ad-

minister oaths and to take and certify depositions, do hereby certify that on June 14, 1946, beginning at 10:00 o'clock, a. m., at the place set forth in the caption page hereof, the aforementioned witnesses, James W. Norvell, Paul L. Mitchell and Fred L. Saunders, who are of sound mind and body, were by me first carefully examined, cautioned, and duly sworn to testify to the truth, the whole truth, and nothing but the truth; that they thereupon testified as above set forth; that the depositions were taken down in shorthand and were reduced to typewriting by me; that the reading and signing of said deposition by the witnesses was waived by the said witnesses and by the said parties by their counsel.

I Hereby Certify that the foregoing is a true and correct transcript of the testimony given by said witnesses at the aforesaid time and place.

I Do Further Certify that I am not related by blood or marriage nor am I an employee of the attorney or counsel of any of the parties nor am I a relative of or an employee of said attorneys or counsel or of the aforementioned witnesses, nor am I financially interested in the transaction.

In Witness Whereof, I have hereunto set my hand and official seal this 15th day of August, A. D. 1946, at my office in West Palm Beach, Florida.

C. E. JONES,
Notary Public, State of Florida at Large.

(Notarial Seal)

My Commission expires April 26, 1948.

1068 PLAINTIFF'S EXHIBIT No. 1.

Date 6-14-46.

Cocktail napkin attached bearing imprint "Rainbow Room, Hotel Pennsylvania, West Palm Beach, Florida".

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1071 MEMORANDUM OPINION.

Filed Jan. 23, 1947.

(Title Omitted.)

This case is again before the Court on an application of the Administrator of the Wage and Hour Division of the United States Department of Labor, filed April 16, 1946, seeking an adjudication in civil contempt of the defendants based on alleged violations of the terms of the Judgment of this Court entered August 29, 1941 and of the Amended and Modified Judgment entered June 3, 1943.

On July 8, 1940 Petitioner's predecessor filed a complaint against all the above named defendants seeking an injunction under Section 17 of the Fair Labor Standards Act against alleged violations of said Act. After trial the Court, on August 29, 1941, entered a Final Judgment against the co-partner defendants doing business as Southern Industries and against the Jacksonville Paper Company as to its operations in its main office and warehouse in Jacksonville and against the following branches: Jacksonville Paper Company, Jacksonville; Capitol Paper Company, Tallahassee; Pensacola Paper

Company, Pensacola; Partin Paper Company, Mobile, Alabama and against the Atlantic Paper Company, Savannah, Georgia. The Court held that employees of the Jacksonville Paper Company at the following branches were not subject to the terms and provisions of the Wage and Hour law, to-wit: Tampa Paper Company, Tampa; Lakeland Paper Company, Lakeland; Central Paper Company, Orlando; East Coast Paper Company, West Palm Beach; Everglades Paper Company, Miami; Pinellas Paper Company, St. Petersburg, all in the State of Florida, and Macon Paper Company, Macon, Georgia.

Both sides appealed and the Circuit Court of Appeals in Fleming, Administrator vs. Jacksonville Paper Company, et al., and visa versa, 128 Fed. 2nd, 395, reversed the lower Court primarily on the ground that the Judgment and injunctive order went beyond the relief sought by plaintiff and directed that a new Judgment and Injunctive Order be entered restricting the injunction to prohibition of violations alleged in the complaint. The Circuit Court of Appeals held that the duties of each particular employee would govern the coverage, but held against the contention of the Administrator that all employees of all branches were within the Act because the merchandise handled by them, to a large extent, came from outside the State. Certiorari was granted by the Supreme Court of the United States and in Walling, Administrator vs. Jacksonville Paper Company, 317 U. S., 564, the Supreme Court modified and as modified affirmed the Judgment of the Circuit Court of Appeals.

The Supreme Court held that that part of the decision of the Circuit Court of Appeals, which held that "any pause at the warehouse is sufficient to deprive the remainder of the journey of its Interstate status", was too restrictive. The Supreme Court held that a temporary

pause at the warehouse does not mean that goods are no longer, "in commerce", within the meaning of the Act; if the halt in the movement of the goods is a convenient and natural step in the process of getting them to their final destination they remain in commerce until they reach those points. The Court held, however, that the Administrator had not sustained the burden which was on him to show that the goods continued in commerce where they passed through defendant's warehouse. This question was left for decision by the District Court after further evidence thereon.

Following the decision of the Supreme Court, the lower Court, without further hearing, entered an Amended and Modified Judgment pursuant to the mandate of the Supreme Court, enjoining the defendant from violating the specific provisions of the Wage and Hour Act, with which they had been charged in the complaint and which the Circuit Court of Appeals and the Supreme Court had determined they were violating.

None of the practices now complained of and for which plaintiff asks the Court to adjudge the defendants in civil contempt were specifically enjoined by the Judgment of August 29, 1941 or by the Judgment of June 3, 1943, although most of the practices were in existence at the time these Orders were entered. The reason for this grew out of the fact that the first trial of this case centered around the controversy as to what extent the defendants were subject to the Act. Nothing further was decided in the first trial of this case and that question was not fully decided.

The questions the Court now has before it may be summarized as follows:

1. Are the employees of the Jacksonville Paper Company, at its branches in Tampa, Orlando, St. Petersburg,

Lakeland and West Palm Beach, Florida, engaged in work in Interstate Commerce, within the meaning of the Act? Plaintiff offered no proof of violations at three of the branches, viz: Miami and Daytona Beach, Florida and Macon, Georgia.

2. Is the so-called Accumulated-Hours Plan in violation of the Act?

3. Does the Bonus Plan result in failure to pay required overtime?

4. Were certain employees misclassified as "executive" and "administrative" employees?

5. Did the defendants violate Section 7 of the Act by payment of straight piece rates to piece workers who worked in excess of forty hours per week?

6. Did the defendants violate Sections 6 and 7 of the Act in failing to compensate their employees for hours worked, which were not registered by the time clock?

7. Have the defendants violated the record keeping and shipping provisions ofthe Act?

These questions will be considered in the order stated. A proper exploration of the facts relating to each question will make this Memorandum Opinion tedious and long.

1.

Are the Employees of Jacksonville Paper Company at its Branches at Tampa, Orlando, St. Petersburg, Lakeland and West Palm Beach, Florida, Engaged

in Work in Interstate Commerce, Within the Meaning of the Act?

Jacksonville Paper Company is engaged in the wholesale distribution of a large variety of paper, paper products and related articles. Its home office and warehouse are maintained in Jacksonville, Florida and the company also maintains thirteen branches. As stated above, the employees at the home office and five of the branches were found, at the original trial of this case, to be subject to the Act. The Court now has before it the question as to whether the employees at the above named branches are also subject to the Act.

Approximately three-fourths to four-fifths of the goods which Jacksonville Paper Company distributes are supplied by manufacturers located in States other than the State of Florida, the remainder being supplied by Southern Industries, the co-partnership defendants herein. The Branches we are here considering make no sales across State lines. Employees at these branches are subject to the Act only if goods received at the branches from points outside the State of Florida and sold within the State being then under the Act.

The factual situation surrounding defendant's business and its methods of operation changed substantially during the War which recently ended. Wartime restrictions made it necessary for defendant to allocate to each of its customers a proportionate share of practically all goods purchased by it. This allocation of goods between customers clearly put the merchandise "in commerce" within the meaning of the Act, at all its branches as that term is construed by the decision of the Supreme Court in Walling v. Jacksonville Paper Company, supra. However, the War is now ended. Wartime restrictions have

been largely removed and this case should not and will not be decided on the basis of wartime conditions.

Disregarding that part of the evidence touching the effect of the War upon defendant's operations, other evidence undeniably shows that the branches here in question are engaged in Interstate Commerce in certain particulars. The evidence shows that these branches handle and distribute prior order goods, special order goods and drop shipments. They sell citrus, cigar and other labels which are intended for and actually move in shipments of citrus, cigars and other products to out-of-State points. They sell newsprint to newspaper companies with circulations outside the State. Also numerous items are ordered for specific customers with their names, etc., printed upon the merchandise. This class of business is all "in commerce" and the Supreme Court so held in Walling vs. Jacksonville Paper Company, supra.'

The Opinion of this Court, therefore, as to whether defendant is engaged in Interstate Commerce at the branches here in question will be based upon broader grounds. As pointed out above, approximately three-fourths to four-fifths of all goods sold customers come from outside the State of Florida. The company has an established business with salesmen at each branch and orders are placed for each branch to meet the demands of customers served by the branch as such customers' demands are disclosed by prior orders and purchases. It is impossible for the Court to determine from the evidence precisely what goods shipped in Interstate Commerce to the branches are purchased to fill contracts or anticipated needs of specific customers and what goods are intended for warehouse purposes to meet demands of unknown customers at the time the goods are ordered. But the evidence leaves no doubt in the mind of

the Court that by far the larger part of all goods received at the branches is ordered to fill contracts and anticipated needs of specific customers. And it is the opinion of the Court that the evidence introduced at the prior trial in this case, plus the evidence offered at this trial is sufficient to establish such practical continuity in Interstate Commerce between the movement of the goods to the branches and from the branches to regular customers to keep the movement "in commerce" within the meaning of the Act. Any halt at the warehouse in the movement of the goods purchased to fill orders of customers is merely an intermediate step in the process of getting such goods to customers.

The company makes no segregation of its employees as between Interstate and Intrastate Commerce activities. The record shows that all of its employees participate in the foregoing activities sufficient to bring those that are covered by the Act within its terms. Since defendant uses its employees indiscriminately in both classes of business and since defendant is engaged in Interstate Commerce at all the above named branches it is not necessary for the Court to do more at this time than determine that a substantial part of the work of all employees at said branches is in Interstate Commerce and the Court so determines and holds.

2.

The Accumulated-Hours Plan.

On or about April 29, 1940 defendant inaugurated a so-called Accumulated-Hours Plan as to many of its employees who had formerly been paid flat weekly salaries without additional compensation for overtime hours. The change was accomplished through a wholesale firing of all employees on Saturday, April 27, 1940 and a

wholesale re-hiring of these same employees on Monday, April 29, 1940. Under the Accumulated-Hours plan employees generally continued to receive the same amount of weekly compensation as before, with minor changes necessitated by arithmetical limitations and they continued to work the same number of hours as formerly.

In order to put the plan into effect the employees were required to sign a contract of employment. This contract was in blank form and contained a space in which the straight time and overtime hourly rate of pay was stated. Some of the employees testified that the contract had been filled out before they signed it, while others testified this was not the case with them. The desired results were accomplished by setting up for each employee a purported hourly rate which was arrived at by dividing into the regular and agreed weekly salary a number of hours for which the employee was purportedly employed which was, in every case, greater than the number customarily and regularly worked. Defendant then computed and entered on its payroll records compensation at the alleged hourly rate for the straight time hours and an additional one-half time for hours between forty and the number specified in the contract. The female employees normally worked a schedule of forty-eight hours, both before and after the Accumulated-Hours Plan went into effect. Their hourly rates, in most cases, were computed on an assumed schedule of forty-nine and one-half hours and were figured so that the agreed salary covered both straight time and overtime for forty-nine and one-half hours. In later contracts an assumed schedule of fifty-five hours was used for some of the women employees. The male employees normally worked a weekly schedule of fifty hours. The hourly rates were figured and the contracts and payroll records were set up for an assumed fifty-four hour schedule. Later the rates were calculated on the basis of fifty-five hours, in some cases, and sixty hours in others.

On August 1, 1940, the Plan was amended to include a purported account with each employee to which there were posted weekly the difference between the hours the employee actually worked and the number for which the employee had been purportedly hired. The effect of the Amendment was to make it unnecessary for the company to pay any overtime compensation for any additional overtime hours worked beyond those agreed to be worked at the time the employee was hired, except in a few instances not important here. The Plan, as operated, left the employees indebted to the company for many unworked hours, but the record shows the company never called upon any of its employees to make good on that part of their contract beyond failing to compensate them for the time worked beyond the schedule agreed upon.

At the time the Accumulated-Hours Plan was put into effect, it was believed by defendant to fully comply with the decision of the Supreme Court of the United States in Walling vs. A. H. Belo Corporation, 316 U. S., 624. The Amendment to the Plan, adopted August 1, 1940, was an effort to take advantage of the pre-payment plan theretofore promulgated by the Administrator of the Wage and Hour Division.

Counsel for plaintiff contends that the Supreme Court has over-ruled its holding in Walling v. Belo Corporation, supra, by its later decisions in Walling v. Helmerich & Payne, Inc., 323 U. S., 37; Walling v. Youngerman-Reynolds Hardwood Co., Inc., 325 U. S., 419 and Walling v. Harnischfeger Corporation, 325 U. S., 427. Counsel for plaintiff further contends that the decision of the Supreme Court in the Belo case has no application to this case.

The Circuit Courts of Appeals for the Second and Seventh Circuit, in Walling v. Uhlmann Grain Co., et al., 151 Fed. 2nd, 381 and Walling v. Richmond Screw Anchor Co., Inc., 154 Fed. 2nd, 780 lend support to the contention of counsel for plaintiff that the Supreme Court has so modified its holding in the Belo case that the latter case is no longer the law.

This Court does not agree with the contention of counsel for plaintiff that the Supreme Court has completely nullified its decision in the Belo case. The Accumulated-Hours Plan here under consideration, however, is in no respect like the plan approved by the Supreme Court in the Belo case and the decision in that case has no controlling effect here. The testimony in this case shows that defendant hired its employees for a stipulated weekly salary for which the employees agreed to work a certain number of hours weekly. The wholesale firing and re-hiring of the employees affected, without any substantial change in compensation or in hours actually worked, and the setting up of a completely false and fictitious method of computing compensation without regard to the hours actually worked, renders the plan and contracts between defendant and its employees, illegal. The vice of the plan lies in the fact that the contracts do not represent the rates paid for non-overtime and overtime hours actually worked.

The plan and the contracts being illegal under the Act, the weekly salaries agreed upon before the contracts were executed and the plan put into effect constitute the basis for determining the regular and overtime rates. In similar cases the Supreme Court has held that the weekly salary agreed upon, divided by the hours agreed to be worked in each week, equals the regular rate; one and one-half times that rate equals the overtime rate for hours worked in excess of the forty. See Walling vs.

Helmerich & Payne, Inc., supra, and Overnight Motor Transportation Co. v. Missell, 316 U. S., 572.

The Court holds the Accumulated-Hours Plan as adopted and put into effect by defendant, is in violation of Sections 6 and 7 of the Wage and Hour Act.

3.

The Bonus Plan.

On June 1, 1942 defendant put into effect a so-called Bonus Plan, which was still in effect without change when the case was heard. At the end of each fiscal year (May 31st) the company, by corporate resolution, declares from the previous year's surplus, a bonus to employees. The Bonus is paid all employees except Managers working on a split profit basis and salesmen working on commissions. The Bonus is a fixed percentage of the employee's previous year or partial year's total compensation, being payable in twelve equal monthly installments.

The schedule of Bonus percentages is as follows:

Continuous employment for 8 years or more	25 %
Continuous employment for 5 to 8 years	22½%
Continuous employment 1 to 5 years	20 %
Employment for less than 1 year	15 %

Defendant issues notices to the employees yearly giving them formal notice of the declaration of the bonuses. The Board of Directors contemporaneously with the declaration of the bonus authorizes the execution of a promissory note, payable to each employee entitled to a bonus, for the full amount of the bonus due him. The notice to employees states that the company will hold

the notes "as a matter of convenience" and the employees apparently never see them. The Bonus is paid monthly and defendant credits on the back of each note the monthly installment as paid. The notes, themselves, bear a stamped statement to the effect they will be canceled if the employee's connection with the company is terminated any time during the year and the testimony is to the effect that the note, in each case, is canceled without further payment to the employee.

The evidence shows that the Bonus Plan was inaugurated by the company as a guarantee of increase in compensation to hold its employees during the War period. The company does not include the bonus payments as part of the employee's compensation in computing the regular rate of pay for overtime purposes. In this connection, however, it should be remembered that the bonus represents all payments made to the employee during the prior year, which includes all overtime payments. Plaintiff, relying upon Walling v. Harnischfeger Corporation, supra, Walling v. Youngerman-Reynolds Hardwood Co., Inc., supra, and Walling v. Helmerich & Payne, Inc., supra, and other cases contends that the Bonus Plan does not comply with Section 7 of the Act.

The testimony conclusively shows that the so-called Bonus Plan payments are in no sense a gratuity. As pointed out above, the plan was devised to hold employees in defendant's services by assuring them an annual increase in pay. Like the Accumulated-Hours Plan, it fails to take into consideration the amount of overtime worked. While overtime worked is included in the total compensation upon which the bonus is calculated the Plan does not comply with Section 7 of the Act, in computing overtime compensation for the employees. It is subject to the same legal obstacles that renders the Accumulated-Hours Plan in violation of the Act and for the same reason the Bonus Plan is in violation of the Act.

4.

Employees Classified as Executive and Administrative Employees.

Plaintiff's amended Petition claims that defendants have failed to comply with the overtime requirements of the Act as to twenty-three employees. However, plaintiff offered no proof of violations as to three of these employees, viz: J. B. Dupree, Roy E. Butts and A. F Wilberling. The question of exemption remains for twenty employees. Eighteen of these were employed in the home office and branches of the Jacksonville Paper Company. The other two were employed by Southern Industries. All twenty employees testified either at the trial or by depositions taken at the various branches before the trial. The Supreme Court has held that exemptions to the Fair Labor Standards Act are to be narrowly construed. See A. H. Phillips, Inc., v. Walling, 324 U. S., 490.

The Administrator is specifically directed, under Section 13 (a) (1) of the Act, to define the terms "executive" and "administrative" employees. He has done this, by regulations Title 29, Chapter V, Code of Federal Regulations, Part 541. It is unnecessary for the Court to detail here the "executive" and "administrative" definitions as defined by the Administrator.

The employees in question fall into three groups. The first group of nine employees were employed by the Jacksonville Paper Company as shipping clerks, one in the home office and the other eight in branch offices. The second group of nine employees were employed as cashiers at branch offices of the Jacksonville Paper Company. The remaining two employees were employed as foremen by Southern Industries. The designation of

shipping clerks and cashiers may not, in each instant, be in exact accord with the title given the employees, but this classification will suffice for hte purpose of considering whether the employees are exempt under said Regulations, Part 541

The definitions of the terms "executive" and "administrative" employees adopted by the Administrator presents considerable trouble in its application in specific cases. This case is illustrative of the trouble encountered by the employer in operating his business under the regulations as well as by the Court in determining whether employees are exempt under the regulations. For example, in this case it is considered by the Administrator that shipping clerks and cashiers in certain offices of the defendant are exempt, but he contends that in other offices they are not exempt.

The executive exemption requires that an employee satisfy each of six tests in order to be exempt. To come within the administrative exemption it is necessary for an employee to satisfy sub-section A of Section 541.2 and either sub-section B (1), B (2) or B (3). The tests or conditions prescribed by the regulations have been consistently upheld as valid and the Court has no discretion in the matter. Its only duty is to see if the employees meet the prescribed tests.

In some instances the eighteen employees classified as shipping clerks and cashiers failed to qualify because they did not satisfy salary requirements for an administrative employee, laid down by sub-section A of Section 541.2. In other instances they did not customarily and regularly direct the work of two or more employees; did not have authority to "hire or fire employees" or did not "customarily and regularly exercise discretionary

powers." In most instances these employees failed to qualify for the reason that the non-exempt work they performed exceed the 20% tolerance allowed by the regulation. All eighteen employees failed to satisfy one or more of the foregoing tests. The record is so conclusive upon this question it is unnecessary for the Court to summarize the reason for the disqualification of each particular employee.

As stated above, the outstanding failure to qualify for exemption was the fact that most of these employees performed non-exempt work in excess of the 20% tolerance prescribed by the Administrator. Some day some of the branches are going to grow to an extent, if some of them have not already done so, where these same employees will meet the requirements of Section 541 and become exempt. However, under the evidence introduced in this case the Court is required to and does hold that the eighteen employees classified as shipping clerks and cashiers, did not, at the time the case was heard, meet the requirements of regulations, Part 541, and are subject to the overtime requirements of the Act.

There remains the two employees of Southern Industries. C. C. Cantrell, one of these employees, is a working foreman, employed in the envelope department of Southern Industries. His department utilizes both machine and handwork. There are about twelve machines in the department. Cantrell supervises from eleven to thirteen employees. About seven of these are women. In addition to this it is Cantrell's duty to keep these machines running. If one breaks down and has to go to the shop he does nothing about the repair. However, adjustments are continuously required and Cantrell holds his job because of his ability to make necessary adjustments and keep the machines in operation. The record

indicates he is a good employee and pitches in and helps whenever and wherever he is needed. The Administrator, in adopting his regulations, intended to make an employee of this class subject to the Act. It is clearly so stated in Press Release G-201. The Court, therefore, has no authority in the matter other than to hold that this employee is subject to the Act.

What the Court has said about Cantrell is equally applicable to E. C. Klehm. Klehm was also employed as a working foreman in the envelope department of Southern Industries. He supervised the work of twelve employees. Eight machines were operated in his department and all employees, except three, were women. Klehm was a die-cutter and warehouse foreman. He regularly performed several types of non-exempt work. In addition to his die-cutting he adjusted machines, kept them operating and generally did everything that had to be done. These extra duties make him also subject to the Act.

5.

Piece Rate Workers.

Southern Industries had two employees doing piece work. The machines operated on a twenty-four hour basis. Each employee worked twelve hours. The man who operated the machines on the day shift was general foreman of the department and was subject to call at night if anything went wrong with the machines which the night man could not adjust, which seldom occurred. Both employees were compensated on a straight piece work basis. The day-man received, in addition to the piece rate for the work he did in the day, additional compensation, on a piece rate basis, for the work done at night by his subordinate. Each of these employees

working twelve hours a day did considerable overtime work. This was not taken into consideration in fixing the piece rate. The Supreme Court has held that the overtime provisions of the Act are applicable to piece rate workers. See U. S. v. Rosenwasser, 323 U. S., 360; Overnight Motor Transportation Company v. Missell, supra. Southern Industries, therefore, violated Section 7 of the Act in compensating piece rate workers at straight time piece rate.

6.

Failure of Employees to Punch the Time Clock.

Southern Industries, in order to aid it in complying with the record provisions of the Act, installed a time clock at its plant which it required all employees to punch. In a few instances employees failed to comply with the rule and were not paid. The weakness in the rule is that it is arbitrary to the extent that it penalizes any employee who fails to punch the clock. It should be amended in some fair way so as to give the employee an opportunity to remedy the oversight by having a foreman or some other qualified employee certify as to the hours the employee actually worked. However, the instances of violation shown are trivial and until such time as the Administrator can show more extended violations of this rule the Court refuses to take cognizance of the few isolated violations shown.

7.

Failure to Keep Records.

The evidence shows and the defendants admit that they have not been keeping a record of the hours worked by the employees classified by them as "executive" and

"administrative" employees and have not kept an accurate record of the hours worked by piece workers. Their failure to do so grew out of the fact that defendants believed these employees were not subject to the Act. They agree that should the Court find that the employees in question are subject to the Act, that proper records of the hours worked should be and will be kept. The failure to keep these records constituted a violation of the Act, but, compliance by the defendants with the Final Judgment of this Court on other questions raised in this case, will necessitate compliance with the record keeping provisions of the Act.

Plaintiff also complains that the defendants failed to keep proper records of hours worked by certain employees at the Orlando branch and one or two other branches. This complaint grew out of the fact that the local manager of the company at these branches allowed employees time off without loss of compensation and to later make up such loss of time by working short periods of overtime. The evidence shows that this practice was purely for the benefit of the employees, but since the Administrator has complained about it the practice has been discontinued and employees are no longer permitted to enjoy the privilege of taking time off without loss of compensation and granted the opportunity to work a few minutes overtime to make it up. Since the practice has been discontinued it appears to the Court that no action in this mater is necessary.

Adjudication in Contempt and Punishment Will Not Be Visited Upon the Defendants.

As pointed out earlier in this Memorandum Opinion, all the questions raised by the application of plaintiff, seeking an adjudication in civil contempt based on alleged violations by the defendants of the terms of the for-

mer Judgments of this Court, challenged the legality of practices, save one, that were in effect when the Judgments were entered. The one exception is the Bonus Plan, which was inaugrated in 1942, subsequent to the earlier Judgment, but prior to the modified Judgment of June 3, 1942. All the questions are of such nature and character that defendants are entitled to their day in Court for an adjudication of the questions. The parties attempted to secure an adjudication of some of the questions at the former trial, but the Court restricted the issues and refused to hear evidence on the questions. Upon this point the Court in its Conclusions of Law, said:

"The Court announced earlier in the trial of this case that an injunction would issue against the defendants for violations committed prior to the filing of this complaint in all other than the branch houses, and much proffered testimony was rejected by the Court dealing with the business of the defendants at points other than in the branch houses, and the Court does not deem it fair and just to make definite or specific findings on particular phazes of the practices of the company at those places of business other than at the disputed branches. If it was error then so to hold, it would be more grave error to now otherwise hold, after the rejection of evidence dealing with the particular practices at points other than at the disputed branches."

It does not lie within the discretionary power of the Court to inflict punishment upon defendants for violations of the Act, not specifically imposed by the earlier Judgments. To constitute civil contempt there must be some evidence of a wilfull and intentional violation of a Court Order. There is no evidence in this case showing a wilfull violation of any of the specific provisions of the former Judgments prohibiting the doing of any

specific thing. In fact, as just pointed out above, none of the questions here considered were considered and passed upon by the Court at the former hearing of this case.

Plaintiff insists the Court should enforce compliance with its former Judgments by ordering the payment of the unpaid statutory wages due defendant's employees. The Administrator is not authorized by the Act to enforce the payment of unpaid statutory wages to employees who are under the Act. Section 16 of the Act expressly gives such right to the employees. There is no evidence in the record of contumacy that would justify the infliction of a penalty upon the defendants, measured by the amount of unpaid statutory wages. See Walling v. Crane, (CCA 5), decided November 8, 1946.

The Court will consider the application of plaintiff for an adjudication in civil contempt as an Amended Complaint seeking a broadening of the Injunctive Orders heretofore entered in this case, and will enter an Amended Judgment enjoining defendants from violating the provisions of the Fair Labor Standards Act as adjudicated in this Memorandum Opinion.

Dated at Jacksonville, Florida, this 23rd day of January, 1947.

DOZIER A. DeVANE,
United States District Judge.

FINAL JUDGMENT ON PLAINTIFF'S APPLICATION FOR ADJUDICATION IN CONTEMPT.

1091 D. Filed Feb. 19, 1947.

C. O. B. 10, Pg. 367.

In the District Court of the United States for the Southern District of Florida, Jacksonville Division.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff.

v. Civil Action Case No. 209-J.

Jacksonville Paper Company, a corporation, and Delia Drawford McGeehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as Trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee and Berrylin Ray McGehee, as co-partners, doing business as Southern Industries Company; and Clifford G. McGehee, Defendants.

This cause coming on this day to be heard on the plaintiff's application for adjudication in civil contempt, the order to show cause issued thereon on April 16, 1946, and defendants' answer thereto; and, the Court having held a hearing thereon in Jacksonville, Florida, on June 17, 18, 19 and 20, 1946, having heard the evidence and the arguments of counsel, and having considered the briefs submitted by the parties; and the Court having, on January 23rd, 1947, filed its memorandum opinion herein, in which it adjudicated the merits of the various issues raised on plaintiff's said application, and the defendants' answer thereto; and sufficient reason therefor

appearing; upon consideration whereof final judgment is hereby entered on plaintiff's said application in accordance with the applications made in said memorandum opinion as follows:

I.

It is hereby Ordered, Adjudged and Decreed that the plaintiff's application for adjudication in civil contempt be and the same is hereby denied; that the relief prayed for in said application be and the same is hereby denied; and that the rule to show cause issued herein on April 16, 1946, be and the same is hereby dismissed.

And the Court having concluded for the reasons stated in the said opinion that violations of the final judgment entered herein on August 29, 1941, and the amended and modified judgment entered June 3, 1943, were not wilful, and that it considered plaintiff's aforesaid application as an amended complaint seeking a broadening of the injunctive orders contained in the said decrees, and having concluded that the scope of said judgments should be broadened and extended to include specific probations against the various record-keeping and payment practices of the defendants found by the Court to be in violation of the Fair Labor Standards Act of 1938, and of the provisions of the judgments aforesaid;

Now, therefore, upon consideration whereof, it is hereby Ordered, Adjudged, And Decreed, that:

II.

All terms and provisions of the said final judgment entered August 29, 1941, and of the amended and modified judgment entered June 3, 1943, are expressly continued

in full force and effect; and, without limitation of the provisions of said judgment enjoining the respective defendants, their officers, agents, servants, employees, and attorneys, and all persons acting or claiming to act in their respective behalfs and interests, from violating Sections 6, 7, 11 (c), 15 (a) (1), 15 (a) (2), and 15 (a) (5), of the said act, the final judgment entered herein on August 29, 1941, and the said amended and modified judgment are hereby modified and broadened to include specific prohibitions as follows:

A.

It is hereby Ordered, Adjudged and Decreed that the defendant, Jacksonville Paper Company, a corporation, its officers, agents, servants, employees and attorneys and all persons acting or claiming to act in its behalf and interest be and they are hereby permanently enjoined and restained from:

1. Continuing the use of the so-called accumulated-hours plan which has been held by the Court to constitue a violation of Section 7 of the Fair Labor Standards Act.

2. Continuing to use the bonus plan which has been held by the Court to be invalid as a violation of Section 7 of the Fair Labor Standards Act, except upon inclusion by the defendant of the amount of the bonus in the regular earnings of its employees for the monthly period next preceeding such bonus payment in arriving at their regular rates of pay for the purpose of computing overtime compensation under Section 7 of the Fair Labor Standards Act.

3. Employing Herman J. Sanders, Margaret Oetgen Burke, B. L. Fields, Pliny F. White, Sherman Owensby,

Jr., Claude Jones, R. F. Boykin, Amos Cox, Julian K. Davis, Paul L. Mitchell, Thomas Passmore, Eugene Lal lacee, Fred L. Saunders, Henry Fleck, J. H. Green, J. D. Robinson, J. O. Gilchrist and George L. Fairfield, or any successors to such employees for a work-week longer than forty (40) hours without paying any of them overtime compensation in accordance with Section 7 of the Act, unless the nature of the employment of the employee in question changes so substantially from that proved at the hearing of this cause as to qualify such employee for exemption as employed in an executive or administrative capacity, within the regulations now existing; or which may hereafter be promulgated by the Administrator under the authority conferred by Section 13 (a) (1) of the Act.

4. Failing to keep a record of the hours worked each week day and each work week by the non-exempt employees or their successors named in paragraph 3 hereof.

B.

It is further Ordered, Adjudged and Decreed that the defendant, Delia Crawford McGehee, Ray Sutton McGehee, and C C. McGehee, and M. R McGehee and Ray Sutton McGehee as Trustee for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company, and Clifford G. McGehee, their officers, agents, servants, employees, and attorneys, and all persons acting or claiming to act in their respective behalves and interest be and they are hereby permanently enjoined and restrained from:

1. Employing any of their piece rate employees for a work-week longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours in such work-week at a rate not less than one and one-half times the regular rate at which he is employed.

2. Employing Edward C. Klehm and C. C. Cantrell or any successors to such employees for a workweek longer than forty (40) hours without paying any of the overtime compensation in accordance with Section 7 of the Act, unless the nature of the employment of the employee in question changes so substantially from that proved at the hearing of said case as to qualify such employee for exemption as employed in an executive or administrative capacity within the regulations now existing; or which may hereafter be promulgated by the Administrator under the authority conferred by Section 13 (a) (1) of the Act.

3. Failing to keep a record of the hours worked each workday and each workweek by the non-exempt employees or their successors named in paragraph 2 hereof.

4. Failing to record as hours worked and failing to compensate for time actually worked by their employees on occasions when such employees may by oversight fail to punch or ring the time clocks.

The costs of this proceeding are hereby taxed against the defendants.

Done and ordered at Tampa, Florida, this 18th day of February, A. D., 1947.

DOZIER A. DeVANE,
United States District Judge.

1096 NOTICE OF APPEAL.

Filed Apr. 28, 1947.

(Caption Omitted.)

Notice is hereby given that Jacksonville Paper Company, a corporation; and Delia Crawford McGehee, Ray Sutton McGehee and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as Trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company, and Clifford G. McGehee, defendants in the above entitled cause hereby severally appeal to the United States Circuit Court of Appeals for the Fifth Circuit from that Final Judgment dated the 18th day of February, 1947 and entered in said cause on the 19th day of February, 1947 and from each and every part thereof.

Dated at Jacksonville, Florida, this 26th day of April, A. D. 1947.

RAGLAND, KURZ & KURZ,
(Sgd.) By L. KURZ,
Attorneys for Defendants.

608 Consolidated Building,
Jacksonville 2, Florida.

DEFENDANT'S DESIGNATION OF CONTENTS OF RECORD.

1097 Filed May 3, 1947.

(Title Omitted.)

To the Clerk of said Court:

In accordance with Rule 75-A of the Federal Rules of Civil Procedure, you are hereby requested to prepare a transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to the Notice of Appeals filed in the above-entitled cause, and to include in such transcript all of the proceedings and evidence designated below:

1. Application for Adjudication in Civil Contempt.

2. Order to Show Cause.

3. Answer of Defendants to Application for Adjudication in Civil Contempt.

4. All of the testimony taken in said cause and all of the depositions filed in evidence therein, but not including the exhibits filed in evidence at the trial of said cause (other than the depositions of various witnesses hereinabove directed to be included) the original of which exhibits defendant will request the Court to transmit to the Appellate Court.

5. Memorandum Opinion of United States District Judge Dozier A. DeVane.

6. Final Judgment on Plaintiff's Application for Adjudication in Contempt.

7. Notice of Appeal filed in said cause.

8. Defendant's Designation of Contents of the Record in said cause.

This May 2, 1947.

RAGLAND, KURZ & LAYTON,
By L. KURZ,
Attorneys for Defendants.

608 Consolidated Building,
Jacksonville, Florida.

State of Florida,
County of Duval.

Before me, the undersigned authority, personally appeared Anne H. Knight, who being by me first duly sworn, deposes and says that she is a stenographer employed in the law offices of Ragland, Kurz & Layton, Jacksonville, Florida, Attorneys for Defendants in the above entitled cause; that in such capacity she prepared the foregoing Defendant's Designation of Contents of Record; that she placed a true copy of said instrument in an envelope legibly addressed to

Honorable George A. Downing, Regional Attorney,
United States Department of Labor,
500 Witt Building,
Atlanta 3, Georgia,

Attorney of Record for the Plaintiff, United States of America, and that said envelope, after being duly sealed and with sufficient postage affixed, was deposited by her in the receptacle provided by the United States Postal Department in the City of Jacksonville at the Consoli-

dated Building, for the receipt of outgoing mail, all on the 2nd day of May, A. D. 1947.

(Sgd.) ANNE H. KNIGHT.

Sworn to and subscribed before me this 2nd day of May, A. D. 1947

(Sgd.) ADELE SAFAY,
Notary Public, State of Florida at Large.

(Notary Seal)

My Commission Expires: June 26, 1950.

1100 STIPULATION TO TAKE DEPOSITIONS.

Filed May 21, 1946.

(Title Omitted.)

It is hereby stipulated and agreed by the parties by their undersigned counsel that the testimony of the witnesses employed by defendant, Jacksonville Paper Company, at its branches outside the City of Jacksonville, may be taken upon oral depositions and that such depositions may be offered and received in evidence in lieu of testimony at the hearing in this matter, subject to such objections as are provided for in Rules 26 (e) and 32 (c) of the Federal Rules of Civil Procedure.

It is stipulated and agreed that said depositions may be taken before any notary public who is a qualified Court reporter. The plaintiff will make all the necessary arrangements for the services of such Court reporters and for space for the hearings. The defendant, Jacksonville Paper Company, agrees to produce without

the necessity of a subpoena such of the witnesses as are presently in its employ.

Dated at Jacksonville, Florida, this 16th day of May, 1946.

WILLIAM S. TYSON,
(William S. Tyson)
Solicitor,
GEO. A. DOWNING,
(George A. Downing)
Regional Attorney,
JAMES H. SHELTON,
(James H. Shelton)
Senior Attorney,
Attorneys for Plaintiff.

RAGLAND, KURZ & LAYTON,
By L. KURZ,
Attorneys for Defendants.

1101 ORDER.

Filed May 21, 1946, Jacksonville, Fla., Edwin R. Williams, Clerk.

This cause coming on this day to be heard upon the foregoing stipulation, upon consideration whereof it is hereby:

Ordered that said stipulation be approved and filed. It Is Further Ordered that depositions may be taken by the parties as agreed in said stipulation and that said depositions may be offered and received in evidence in lieu of the oral testimony of the witnesses who are employed in branches of the defendant, Jacksonville Paper Company, outside of the City of Jacksonville.

Done And Ordered at Jacksonville, Florida, this 21st day of May, A. D. 1946.

(Signed) LOUIE W. STRUM,
United States District Judge.

DEFENDANTS' DESIGNATION OF ADDITIONAL CONTENTS OF RECORD.

1102 Filed May 13, 1947.

(Title Omitted.)

To the Clerk of said Court:

In addition to the proceedings and evidence heretofore designated to be included in the transcript of record to be prepared by you and filed in the United States Circuit Court of Appeals for the Fifth Circuit, you are hereby requested to include therein the following additional documents:

1. Stipulation to Take Depositions, and Order thereon.

2. These Additional Directions.

two copies of which documents are hereto attached.

This May 12, 1947.

RAGLAND, KURZ & LAYTON,
By L. KURZ,
Attorneys for Defendants.

608 Consolidated Building,
Jacksonville, Florida.

State of Florida,
County of Duval.

Before me, the undersigned authority, personally appeared Anne H. Knight, who being by me first duly sworn, deposes and says that she is a stenographer employed in the law offices of Ragland, Kurz & Layton, Jacksonville, Florida, Attorneys for Defendants in the above entitled cause; that in such capacity she prepared the foregoing Defendant's Designation of Additional Contents of Record; that she placed a true copy of said instrument in an envelope legibly addressed to

Honorable George A. Downing, Regional Attorney,
United States Department of Labor,
500 Witt Building,
Atlanta 3, Georgia,

Attorney of Record for the Plaintiff, United States of America, and that said envelope, after being duly sealed and with sufficient postage affixed, was deposited by her in the receptacle provided by the United States Postal Department in the City of Jacksonville at the Consolidated Building, for the receipt of outgoing mail, all on the 12th day of May, A. D. 1947.

ANNE H. KNIGHT.

Sworn to and subscribed before me this 12th day of May, A. D. 1947.

HELEN O'HIGGINS,
Notary Public, State of
Florida at Large.

(Notary Seal)

My Commission Expires: August 1, 1950.

1104 ORDER.

Filed May 6, 1947.

(Title Omitted.)

It appearing to the Court, upon motion of the Defendant, that the original exhibits introduced at the trial of said cause are not of such a nature that they can be copied by the Clerk for inclusion in the record on appeal, and that such original exhibits should be inspected by the Appellate Court, it is hereby

Ordered And Adjudged that the original exhibits filed in said cause by the Plaintiff and the Defendant, other than depositions of various witnesses filed in evidence in said cause, be sent to the Appellate Court in lieu of copies and that such original exhibits be transmitted by the Clerk at the same time and by the same method as the transcript of record on appeal.

Done And Ordered this 6th day of May, A. D. 1947.

(Sgd.) DOZIER A. DeVANE,
United States District Judge.

1105 GOVT. EXHIBIT No. 2.

Filed in Evidence Jun. 18, 1946.

Jacksonville, Florida,
May 31, 1945.

Office and Warehouse Employees:

We have worked out a bonus plan, effective June 1, 1945 that will be paid to you in 12 monthly installments

from June 1, 1945 through May 31, 1946 on the following basis:

All office and warehouse employees who have been on the payroll continuously for 8 years or more, the equivalent of 25% of your annual salary from June 1, 1944 to June 1, 1945.

All office and warehouse employees who have been on the payroll continuously for 5 to 8 years, the equivalent of 22½% of your annual salary from June 1, 1944 to June 1, 1945.

All office and warehouse employees who have been on the payroll continuously for 1 to 5 years, the equivalent of 20% of your annual salary from June 1, 1944 to June 1, 1945.

All office and warehouse employees who have been on the payroll for less than 1 year, the equivalent of 15% of the actual amount drawn during the 12 months period—June 1, 1944 through May 31, 1945.

The Company is issuing a note (which note as a matter of convenience will be held here in our office) payable in monthly installments to the order of the employees affected and said note will be retired by monthly payment over a period of 12 calendar months.

Please understand this affects office and warehouse employees only; managers working on a split profit basis and all salesmen on commission are excluded.

You will observe that the schedule as outlined is the same as given in our letter of July 14, 1942. This is in keeping with the salary freezing order of the Federal Government. We were notified that we could not change any previously established bonus plan. Suppose we are

fortunate that we adopted this policy some years ago because it could not be put into force under conditions now prevailing but for the fact that it had been previously established.

We wish to express our appreciation for your loyal support during the past year and feel confident that we, together, can carry on even under circumstances now existing.

Yours truly,
JACKSONVILLE PAPER COMPANY,
.....
President.

CGMcGehee:ff

1106 GOVT. EXHIBIT No. 3.

Filed in Evidence Jun. 18, 1946.

$480.48 Jacksonville, Fla., 5-31-45

On the 5th day of each month after date we promise to pay to the order of J. Norman Terrell Forty and 04/100 dollars each month for the next 12 months Dollars at 808 W. Bay St., Jacksonville, Fla., for value received, with interest at the rate of 6 per cent. per annum after maturity, until paid. Together with an attorney's fee of ten per cent. if given after maturity to an attorney for collection.

JACKSONVILLE PAPER COMPANY,
M. R. McGEHEE,
Secretary-Treasurer.

No. ....

Due .....

If for an reason Payee severs his or her conection with this Company this note is then canceled.

Clerk.

Form No. K 12 Printed and for sale by Drew, Jacksonville, 653870.

6/5/45	40.04—8.29—31.75
7/2/45	40.04—8.29—31.75
8/1	40.04—8.29—31.75
9/1	40.04—8.29—31.75
10/1	40.04—8.29—31.75
11/1	40.04—8.29—31.75
12/1	40.04—8.29—31.75

Gone.

Canceled 12-1-45.

GOVT. EXHIBIT No. 5 (WITH SUPPLEMENT).

Filed in Evidence Jun. 19, 1946.

Supplement to Accumulated Hours.

Summary.

Name	Period		Accumulation	
	From	To	Hours	Minutes
Marguerite Adair	8-14-43	5-20-44	418	55
Willie Allman	4-21-45	9-22-45	208	45
L. Bancroft	8-12-44	9- 2-44	57	00
G. C. Barley	[175:50 on 2-7-42]	10-31-42	442	55
E. Barr	8-19-44	9-23-44	75	05
Y. Barrow	1-30-43	3- 6-43	84	05
Madge Leon Beach	[131:36 on 2-7-42]	4- 7-42	601	55
Mildred Beavers	11-20-43	8-12-44	440	40
John Betha	4- 3-43	5- 1-43	77	55
Miss J. M. Blalock	6-20-42	10- 3-42	185	50
A. Blow	10-17-42	11- 7-42	35	00
Thelma Boyd	12- 4-43	4-29-44	169	25
James Braceful	9- 5-42	12-25-43	1188	10
Marjorie Caile	2-10-45	3-24-45	65	40

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James Caldwell	10-21-?	10-28-? Same Yr.	10	40
G. Caskey	11- 4-44	11- 4-44	14	40
M. Casper	9- 2-?	10-14-? " "	158	40
J. Calhoun	7-10-43	10-16-43	144	20
Dale Childreth	10-30-43	1- 8-44	147	40
A. B. Clement	6-30-45	10-13-45	151	50
Jack Collier	5-27-44	7-15-44	87	10
David Collins	3-30-46	4-17-46	36	40
T. D. Conley	1- 8-44	11-25-44	507	00
Cathrine Cooper	[456:43 on 2-7-42]	6-24-44	1330	20
F. S. Corbett	[452:00 on 2-7-42]	12- 9-44	1080	35
Freda Covert	2-10-45	4-21-45	121	20
Agnes Crull	9-29-45	11-17-45	62	30
Plez Daughtry	3-20-45	9- 4-43	263	45
R. A. Daugherty	9-19-42	2-27-43	269	10
Joe Davis	5-27-43	7-22-43	71	40
C. M. Duvall	7- 8-44	7-29-44	64	15
D. C. Early	7-17-?	7-31-? " "	34	15
Leonard Edwards	9-12-42	4- 3-45	1007	15
Reeder Edwards	11- 4-?	12- 2- Same Yr.	117	20
Wilma Ekimovich	4- 7-45	7-25-45	154	15

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Name	Period		Accumulation	
	From	To	Hours	Minutes
Mrs. E. Evans	3-10-?	4- 7- Same Yr.	60	35
Mrs. Mildred Everett	[454:40 on 2-7-42]	7-10-43	997	00
Georgia Fern	[105:57 on 2-7-42]	1-30-43	522	55
Mrs. T. Fields	4-17-43	6-12-43	76	05
Arvera Fish	2-10-45	3-14-45	99	45
Pearl Forbes	2- 5-44	9-16-44	179	20
Ben Fountain	3-11-44	3-25-44	91	20
Joe Frazer	2- 7-42	11-18-44	831	30
Virginia Fudge	6-30-45	10- 6-45	150	00
Fern Garrison	12-16- ?	1-13- Next Yr.	48	35
M. Gibbardt	5-27-44	7-15-44	58	30
L. F. Gillespie	5-29-43	8-12-44	668	40
D. K. Goodenaugh	1- 8-44	8- 5-44	272	35
H. Greenwold	2-16-46	3-30-46	46	45
Mary Grimsby	7- 7-40	7- 7-40	32	55
E. C. Hall	3-20-43	4-17-43	33	10
M. P. Haynes	10-13-45	4-27-46	300	45
Mildred Hensby	12-30-44	1-27-45	70	15
W. Higgins	9-23-44	1-13-45	191	40
A. G. Hightower	3-20-43	6-12-43	119	05

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Lucy Howard	4-21-45	7- 7-45	76	45
Calvin Johnson	10-30-43	10-30-43	8	30
David Johnson	8-19- ?	11-18- Same Yr.	61	10
Evonne Jones	6-12-43	8-28-43	114	45
C. Jones	3-27-43	8-21-43	220	15
J. W. Jones	7- 1- ?	7- 8- Same Yr.	34	00
James Jones	3-20-43	11-18-44	772	35
Willie Jones	10-30-43	9-23-44	627	35
G. Judd	1- 1-44	6-21-45	768	25
A. Kennaird	4-29-44	6- 3-44	70	25
A. Lauriceller	10-13-45	4- 6-46	243	05
William Lee	4-10-43	5-15-43	59	05
Benjamin Leonard	10-30-43	6- 3-44	45	10
Roy Leonard	11-28-42	11-27-43	374	30
Alenzo Lewis	5-15-43	11-18-44	804	25
Edna Lewis	4-29-44	3-30-45	641	50
Norman Lewis	10-30-43	12-11-43	164	40
Frank McGehee	[2-7-42 — 115:05]	11-18-44	1187	40
Louise McGehee	8-14-43	12-25-43	238	15
Mack McGhee	[213:30 on 2-7-42]	11-18-44	1476	40
J. W. Mapps	[38:45 on 2-7-42]	6-12-43	555	50

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Name	Period From	Period To	Accumulation Hours	Accumulation Minutes
D. B. Matthews	[392:33 on 2-7-42]	5-22-43	1215	45
E. McDonald	9-15-45	3-30-46	251	10
Samuel Merritt	9-18-43	11-18-44	766	10
Mrs. I. P. Miller	3-20-43	3-27-43	17	40
Miss E. Mills	[103:40 on 2-7-42]	1-29-44	1060	15
Louise Miner	1-29-44	2-19-44	66	40
J. A. Mize	10-30-43	1-15-44	188	20
Dick Morce	10-30-43	11-20-43	74	35
Mrs. A. Moro	4-28-45	8-10-45	157	20
L. Morris	10-14-44	1-13-45	203	00
Lena Morrison	10-27-45	2- 4-46	214	55
Lucille Nehiling	12- 2- ?	3-17- Next Year	215	35
Marjorie Nelson	4- 7-45	6- 1-45	142	25
Margery O'Dell	12- 1-45	3-16-46	129	10
Ogden Shelton	11-13-43	5-20-44	333	45
R. W. Olcott	7-11-42	1- 9-43	167	00
Peggy O'Neal	11-10-45	3-23-46	228	40
F. D. Paque	7-10-43	7-10-43	24	35
Howard Parish	[109:15 on 2-7-42]	12- 5-42	351	55
Dorothy Peddy	5-29-43	4-29-44	447	25

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Jenet Penn	11-10-45	11-24-45	38	00
J. B. Penney	3-27-43	5-22-43	110	00
M. F. Pfitzer	7- 8- ?	7-29- Same Year	41	45
Miss Edith Pledger	11-21-42	6- 5-43	290	25
Mrs. L. R. Rast	1- 9-43	6-12-43	274	25
	9- 5-42	6-12-43	627	45
Viola Renck	9-15-45	10-27-45	72	10
John (J. H.) Rivers	6-27-42	11-18-44	1185	25
Hazel Robbins	1-20-44	5-13-44	142	10
Delmans Roberts	7- 1- ?	7- 1- Same Year	24	00
Snow Robinson	10-30-43	11-20-43	98	45
Bonnie Rogers	2-24-45	7-21-45	215	05
W. M. Romeo	1-26-46	3- 9-46	57	00
L. C. Schandies	5-22-43	12-11-43	272	55
E. Scott	8-12- ?	9-23- Same Year	98	10
E. Shaffer	8-12- ?	9-23- Same Year	83	35
Peter Sheppard	10-30-43	11-27-43	107	10
Thelma Sherman	6- 9- ?	6-27- Same Year	55	05
M. Sims	5-27-44	9- 2-44	122	35
N. Sirois	3-11-44	5-13-44	141	10
Martha Slatze	8-18-45	8-25-45	54	30
Barney Sly	7- 1- ?	9-23- Same Year	92	15

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Name	Period From	Period To	Accumulation Hours	Accumulation Minutes
Ethel Stanten	6-19-43	7- 3-43	54	40
William Stephens	[193:05 on 2-7-42]	10-17-42	314	10
C. Stilley	6-19-43	7-24-43	52	00
J. Will Strickland	4- 7-45	5-30-45	158	15
John Striggles	5-27-44	11-18-44	105	00
Mack Suttler	3-23- ?	3-23- Same Year	27	65
J. R. Sweat	[283:25 on 2-7-42]	4- 5-45	1883	35
Mary Taylor	6- 3-44	6-17-44	20	55
David Thomas	4-10-43	3-11-44	801	05
S. H. Thompson	[429:25 on 2-7-42]	12- 4-43	1096	55
S. R. Verburg	4-13-46	4-13-46	10	50
Kenneth Voyle	5- 6-44	5-13-44	3	40
J. N. Wagner	2-27-43	3-27-43	38	35
Margaret Waters	[196:29 on 2-7-42]	1- 9-43	514	40
John Watkins	10-30-43	11- 6-43	50	55
Winnifred Watkins	2-10-45	9- 7-45	220	15
Jackie Watterson	7-28-45	11- 3-45	236	20
Miss M. L. Weaver (Ewing)	[213:09 on 2-7-42]	2-16-45	1368	10
P. Weaver	6-19-43	9-11-43	112	20

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J. C. White	10-30-43	11-27-43		
	6- 3-44	6-10-44	125	30
P. F. White	9- 5-42	3-11-44	851	20
George Williams	10-30-43	3-18-44	279	10
Mrs. J. J. Williams	11- 7-42	3-13-43	207	25
Willie Williams	4-10-43	10- 2-43	246	45
Mrs. J. P. Wilson	[37:30 on 2-7-42]	8-29-42	116	05
Lorene Wingard	7- 7-45	8-18-45	99	25
Rose Wingate	9-30-44	11-24-45	641	55
J. N. Wolfe	9-30-44	10-14-44		
	2-24-45	3-10-45		
	3-31-45	4-28-45	117	30
G. Wood	11- 4-44	1- 6-45	129	55
Jennie Webbins	8- 4-45	10- 6-45	89	00
Erma Yosk	2-13-43	2-27-43	28	40
June Zeyen	11- 4- ?	12- 2- Same Year	92	50

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Accumulated Hour Summary.

Name	Period Covers From W/E to W/K	Total Accumulation Hours
D Barton	4-20-46—6- 1-46	65:05
Christine Blackmon	11- 4-44—4- 4-45 7-14-45—6- 1-46	856:05
C. L. Bowdoin	10-30-43—1-15-44 9-15-45—6- 1-46	391:20
J. C. Burner	11-17-45—6- 1-46	316:25
J. A. Chastain	8- 3-40—6- 1-46	2977:25
C. B. Curtis	8- 3-40—6- 1-46	2231:00
Helen F. Dossey	12- 1-45—6- 1-46	226.55
J. L. Fox	4-20-46—6- 1-46	29:40
C. D. Fraser	5-22-43—6- 1-46	1651:40
Frances Fullington	8- 3-40—6- 1-46	1980:00
Florence Hoskins	12-16-44—9-22-45 4- 6-46—6- 1-46	394:10
A. Katz	5-11-46—6- 1-46	13:00
G. Koplin	3-23-46—6- 1-46	71:20
Ione Limbaugh	6-19-43—6- 1-46	1630:00
R. Mandlehr	5-25-46—6- 1-46	13:10
W. Meek	8- 2-41—3- 6-43 2-16-46—6- 1-46	601:45
D. A. Melcolm, Jr.	3- 2-46—6- 1-46	67:50
L. A. Morefield	4-11-42—6- 1-46	1670:55
G. A. Rice	9-22-45—6- 1-46	365:30

Name	Period Covers From W/E to W/K	Total Accumulation Hours
E. E. Spencer	1-31-42—6-19-43 7-14-45—6- 1-46	1235:10
Ruby D. Spencer	5- 4-46—6- 1-46	32:55
A. G. Stanton	8- 3-40—6- 1-46	2537:05
J. H. Sutton	6-19-43—6- 1-46	1287:35
W. G. Taylor	10-31-42—6- 1-46	1798:10
C. H. Threlkeld	8- 3-40—6- 1-46	1946:30
Julia Tyson	4-20-46—6- 1-46	84:00
M. Worland	9-30-44—6- 1-46	726:30
S. Malberg	4- 6-46—5- 4-46	52:25
O. Cole	4-20-46—6- 1-46	49:45
Betty Crosby	12- 8-45—6- 1-46	312:10

GOVT. EXHIBIT No. 6.

Filed in Evidence Jun. 18, 1946.

Name Betty Crosby. Branch.....

	Week Ending	Week Ending	Week Ending	Week Ending Xmas	Week Ending New Y.
1945 and 46.	12-8	12-15	12-22	12-29	1-5-46
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	30.35	47.20	47.15	25.30	22.45
Prepaid Hours	24.55	7.40	7.45	29.30	32.15
Prepaid Hours bro't forward.....	.....	24.55	32.35	40.20	69.50
Accumulated prepaid hours	24.55	32.35	40.20	69.50	102.05
1946.	1-12	1-19	1-26	2-2	2-9
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
	Ill				
Time worked	15.10	47.55	39.25	48.00	47.10
Prepaid Hours	39.50	7.05	15.35	7.00	7.50
Prepaid Hours bro't forward.....	102.05	141.55	149.00	165.35	172.35
Accumulated prepaid hours	141.55	149.00	165.35	172.35	180.25
	2-16	2-23	3-2	3-9	3-16
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	48.00	48.00	46.35	38.10	48.05
Prepaid Hours	7.00	7.00	8.25	16.50	6.55
Prepaid Hours bro't forward.....	180.25	187.25	194.25	202.50	219.40
Accumulated prepaid hours	187.25	194.25	202.50	219.40	226.35
	3-23	3-30	4-6	4-13	4-20
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	48.10	43.50	48.00	43.20	48.00
Prepaid Hours	6.50	11.10	7.00	11.40	7.00
Prepaid Hours bro't forward.....	226.35	233.25	244.35	251.35	263.15
Accumulated prepaid hours	233.25	244.35	251.35	263.15	270.15
	4-27	5-4	5-11	5-18	5-25
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	47.05	43.00	48.05	48.05	48.00
Prepaid Hours	7.55	12.00	6.55	6.55	7.00
Prepaid Hours bro't forward.....	270.15	278.10	290.10	297.05	304.00
Accumulated prepaid hours	278.10	290.10	297.05	304.00	311.00
	1 ½ Week				
Scheduled hours for which paid.....	27.50				
Time worked	26.10				
Prepaid Hours	1.10	Last day used.			
Prepaid hours bro't forward.....	311.00				
Accumulated prepaid hours	312.10				

(1M-4-10-45-L)

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GOVT. EXHIBIT No. 7.
Filed in Evidence Jun. 18, 1946.

Name Christine Blackman. Branch Jax Paper Co.

	Week Ending 9-30	Week Ending 10-7	Week Ending 10-14	Week Ending 10-21	Week Ending 10-28
Scheduled hours for which paid.....					
Time worked	Failed to sign time Sheet 1st 5 weeks of Employment as R.				
Prepaid Hours					
Prepaid Hours bro't forward.....					
Accumulated prepaid hours					
1944.	11-4	11-11	11-18	11-25	12-2
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	13.30	39.20	48.00	48.00	30.30
Prepaid Hours	41.30	15.40	7.00	7.00	24.30
Prepaid Hours bro't forward.....	.....	41.30	57.10	64.10	71.10
Accumulated prepaid hours	41.30	57.10	64.10	71.10	95.40
1944 and 45.	12-9	12-16	12-23	12-30	1-6
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	48.25	48.40	43.55	34.35	39.35
Prepaid Hours	6.35	6.20	11.05	20.25	15.25
Prepaid Hours bro't forward.....	95.40	102.15	108.35	119.40	140.05
Accumulated prepaid hours	102.15	108.35	119.40	140.05	155.30

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1945.	1-13	1-20	1-27	2-3	2-10
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	46.00	48.00	41.55	47.30	48.20
Prepaid Hours	9.00	7.00	13.05	7.30	6.40
Prepaid Hours bro't forward.....	155.30	164.30	171.30	184.35	192.05
Accumulated prepaid hours	164.30	171.30	184.35	192.05	198.45
1945.	2-17	2-24	3-3	3-10	3-17
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	35.35	49.20	48.10	48.40	43.40
Prepaid Hours	19.25	5.40	6.50	6.20	11.20
Prepaid Hours bro't forward.....	198.45	318.10	223.50	230.40	237.00
Accumulated prepaid hours	218.10	223.50	230.40	237.00	248.20
	3-24	3-31	4-7	4-14	
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	Last
Time worked	46.15	35.00	48.40	48.10	Day
Prepaid Hours.....	8.45	20.00	6.20	6.50	4/14/45
Prepaid Hours bro't forward.....	248.20	257.05	277.05	283.25	
Accumulated prepaid hours	257.05	277.05	283.25	290.15	

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(1M-9/20/41-J)

Name Christine Blackman. Branch Jax.

	Week Ending 7-14	Week Ending 7-21	Week Ending 7-28	Week Ending 8-4	Week Ending 8-11
1945.					
Scheduled hours for which paid	55.00	55.00	55.00	55.00	55.00
Time worked	22.25	48.45	40.50	40.30	49.45
Prepaid Hours	32.35	6.15	14.10	14.30	5.15
Prepaid Hours bro't forward	290.15	322.50	329.05	343.15	357.45
Accumulated prepaid hours	322.50	329.05	343.15	357.45	363.00
1945.	8-18	8-25	9-1	9-8	9-15
				Labor D.	
Scheduled hours for which paid	Vacation	55.00	55.00	55.00	55.00
Time worked	.....	48.40	38.25	33.55	49.05
Prepaid Hours	.....	6.20	Ill 16.35	21.05	5.55
Prepaid Hours bro't forward	.....	363.00	369.20	385.55	407.00
Accumulated prepaid hours	363.00	369.20	385.55	407.00	412.55
1945.	9-22	9-29	10-6	10-13	10-20
Scheduled hours for which paid	55.00	55.00	55.00	55.00	55.00
Time worked	Ill 40.50	48.05	47.20	44.45	48.00
Prepaid Hours	14.10	6.55	7.40	10.15	7.00
Prepaid Hours bro't forward	412.55	427.05	434.00	441.40	451.55
Accumulated prepaid hours	427.05	434.00	441.40	451.55	458.55

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	10-27	11-3	11-10	11-17	11-24
Scheduled hours for which paid	55.00	55.00	55.00	55.00	55.00
Time worked	50.15	50.00	44.15	47.25	38.50
Prepaid Hours	4.45	5.00	10.45	7.35	16.10
Prepaid Hours bro't forward	458.55	463.40	468.40	479.25	487.00
Accumulated prepaid hours	463.40	468.40	479.25	487.00	503.10
					Xmas
	12-1	12-8	12-15	12-22	12-29
Scheduled hours for which paid	55.00	55.00	55.00	55.00	55.00
Time worked	48.20	34.55	49.30	45.05	25.10
Prepaid Hours	6.40	20.05	5.30	9.55	29.50
Prepaid Hours bro't forward	503.10	509.50	529.55	535.25	545.20
Accumulated prepaid hours	509.50	529.55	535.25	545.20	575.10
1946.	1-5-46	1-12-46	1-19	1-26	2-2
Scheduled hours for which paid	55.00	55.00	55.00	55.00	55.00
Time worked	28.25	38.15	48.20	47.20	Ill 25.40
Prepaid Hours	26.35	16.45	6.40	7.40	29.20
Prepaid Hours bro't forward	575.10	601.45	618.30	625.10	632.50
Accumulated prepaid hours	601.45	618.30	625.10	632.50	662.10

1043

(1M-4-10-45-L)

Name Christine Blackman. Branch.....

1946.	Week Ending 2-9	Week Ending 2-16	Week Ending 2-23	Week Ending 3-2	Week Ending 3-9
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
		Death of F.			
Time worked	35.55	26.00	30.35	47.45	48.25
Prepaid Hours	19.05	29.00	24.25	7.15	6.35
Prepaid Hours bro't forward.....	662.10	681.15	710.15	734.40	741.55
Accumulated prepaid hours	681.15	710.15	734.40	741.55	748.30
	3-16	3-23	3-30	4-6	4-13
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	48.15	47.40	44.45	47.25	47.40
Prepaid Hours	6.45	7.20	10.15	7.35	7.20
Prepaid Hours bro't forward.....	748.30	755.15	762.35	772.50	780.25
Accumulated prepaid hours	755.15	762.35	772.50	780.25	787.45
	4-20	4-27	5-4	5-11	5-18
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	48.05	43.30	47.40	39.45	49.15
Prepaid Hours	6.55	11.30	27.20	15.15	5.45
Prepaid Hours bro't forward.....	787.45	794.40	806.10	813.30	828.45
Accumulated prepaid hours	794.40	806.10	813.30	828.45	834.30

1044

	5-25	6-1			
Scheduled hours for which paid.....	55.00	55.00	.....	.....	.....
Time worked	39.35	48.50	.....	.....	.....
Prepaid Hours	15.25	6.10	.....	.....	.....
Prepaid Hours bro't forward.....	834.30	849.55	.....	.....	.....
Accumulated prepaid hours	849.55	856.05	.....	.....	.....

(1M-4-10-45-L)

1045

GOVT. EXHIBIT No. 8.
Filed in Evidence Jun. 18, 1946.

Name J. N. V. Terrell. Branch.....

	Week Ending 9-15	Week Ending 9-22	Week Ending 9-29	Week Ending 10-6	Week Ending 10-13
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	50.10	50.00	50.15	50.05	50.00
Prepaid Hours	9.50	10.00	9.45	9.55	10.00
Prepaid Hours bro't forward.....	1581.15	1591.05	1601.05	1610.50	1620.45
Accumulated prepaid hours	1591.05	1601.05	1610.50	1620.45	1630.45
	10-20	10-27	11-3	11-10	11-17
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.05	50.00	50.00	50.00
Prepaid Hours	10.00	9.55	10.00	10.00	10.00
Prepaid Hours bro't forward.....	1630.45	1640.45	1650.40	1660.40	1670.40
Accumulated prepaid hours	1640.45	1650.40	1660.40	1670.40	1680.40
	11-24	12-1			
Scheduled hours for which paid.....	60.00	60.00			
	Thanks.				
Time worked	41.00	50.00	Gone		
Prepaid Hours	19.00	10.00	Graham		
Prepaid Hours bro't forward.....	1680.40	1699.40	Last week 12-1.		
Accumulated prepaid hours	1699.40	1709.40	Jones		

(1M-4-10-45-L)

1046

Name J. N. V. Terrell. Branch Jax Paper Co.

1945.	Week Ending 2-17	Week Ending 2-24	Week Ending 3-3	Week Ending 3-10	Week Ending 3-17
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	49.40	50.15	51.10	41.00	49.20
Prepaid Hours	10.20	9.45	8.10	19.00	10.40
Prepaid Hours bro't forward.....	1268.00	1278.20	1288.05	1296.15	1315.15
Accumulated prepaid hours	1278.20	1288.05	1296.15	1315.15	1325.55
	3-24	3-31	4-7	4-14	4-21
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	50.20	49.55	50.50	50.30	50.30
Prepaid Hours	9.40	10.05	9.10	9.30	9.30
Prepaid Hours bro't forward.....	1325.55	1335.35	1345.40	1354.50	1364.20
Accumulated prepaid hours	1335.35	1345.40	1345.50	1364.20	1373.50
	4-28	5-5	5-12	5-19	5-26
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	50.20	50.10	43.00	50.10	50.20
Prepaid Hours	9.40	9.50	17.00	9.50	9.40
Prepaid Hours bro't forward.....	1373.50	1383.30	1393.20	1410.20	1420.10
Accumulated prepaid hours	1383.30	1393.20	1410.20	1420.10	1429.50

1047

	Week Ending 6-2	Week Ending 6-9	Week Ending 6-16	Week Ending 6-23	Week Ending 6-30
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	52.15	59.45	48.25	49.55	50.10
Prepaid Hours	7.45	.15	11.35	10.05	9.50
Prepaid Hours bro't forward.....	1429.50	1437.35	1437.50	1449.25	1459.30
Accumulated prepaid hours	1437.35	1437.50	1449.25	1459.30	1469.20
	7-7 4th	7-14	7-21	7-28	8-4
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	41.40	50.15	50.55	50.00	53.05
Prepaid Hours	18.20	9.45	9.05	10.00	6.55
Prepaid Hours bro't forward.....	1469.20	1487.40	1497.25	1506.30	1516.30
Accumulated prepaid hours	1487.40	1497.25	1506.30	1516.30	1523.25
	8-11	8-18	8-25	9-1	9-8
					Labor D.
Scheduled hours for which paid.....	60.00	60.00	60.00	Vacation	60.00
Time worked	50.10	41.00	50.00	.....	41.00
Prepaid Hours	9.50	19.00	10.00	.....	19.00
Prepaid Hours bro't forward.....	1523.25	1533.15	1552.15	.....	1562.15
Accumulated prepaid hours	1533.15	1552.15	1562.15	1562.15	1581.15

(1M-9/20/41-J)

1048

Name J. N. V. Terrell. Branch Jax Paper Co.

1944.	Week Ending 7-22	Week Ending 7-29	Week Ending 8-5	Week Ending 8-12	Week Ending 8-19
Scheduled hours for which paid.....	60.00	60.00	60.00	Vacation	60.00
Time worked	50.00	49.35	45.00	.....	50.00
Prepaid Hours	10.00	10.25	15.00	.....	10.00
Prepaid Hours bro't forward.....	889.20	899.20	909.45	.....	924.45
Accumulated prepaid hours	899.20	909.45	924.45	924.45	934.45
	8-26	9-2	9-9	9-16	9-23
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	41.00	50.00	50.00
Prepaid Hours	10.00	10.00	19.00	10.00	10.00
Prepaid Hours bro't forward.....	934.45	944.45	954.45	973.45	983.45
Accumulated prepaid hours	944.45	954.45	973.45	983.45	993.45
	9-30	10-7	10-14	10-21	10-28
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	43.30	36.00
Prepaid Hours	10.00	10.00	10.00	16.30	24.00
Prepaid Hours bro't forward.....	993.45	1003.45	1013.45	1023.45	1040.15
Accumulated prepaid hours	1003.45	1013.45	1023.45	1040.15	1064.15

1049

	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending
	11-4	11-11	11-18	11-25	12-2
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	50.00	41.00
Prepaid Hours	10.00	10.00	10.00	10.00	19.00
Prepaid Hours bro't forward	1064.15	1074.15	1084.15	1094.15	1104.15
Accumulated prepaid hours	1074.15	1084.15	1094.15	1104.15	1123.15
1944 and 1945.	12-9	12-16	12-23	12-30	1-6
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.10	50.05	46.20	41.25	40.40
Prepaid Hours	9.50	9.55	13.40	18.35	19.20
Prepaid Hours bro't forward	1123.15	1133.05	1143.00	1156.40	1175.15
Accumulated prepaid hours	1133.05	1143.00	1156.40	1175.15	1194.35
1945.	1-13	1-20	1-27	2-3	2-10
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	48.35	45.00	34.20	48.20	50.20
Prepaid Hours	11.25	15.00	25.40	11.40	9.40
Prepaid Hours bro't forward	1194.35	1206.00	1221.00	1246.40	1258.20
Accumulated prepaid hours	1206.00	1221.00	1246.40	1258.20	1268.00

(1M-9/20/41-J)

1050

Name J. N. V. Terrell. Branch Jax Paper Co.

	Week Ending	Week Ending	Week Ending	Week Ending	Week Ending
1943 and 44.	12-25	1-1-44	1-8	1-15	1-22
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	41.00	45.00	50.00	50.00	50.00
Prepaid Hours	19.00	15.00	10.00	10.00	10.00
Prepaid Hours bro't forward	602.35	621.35	636.35	646.35	656.35
Accumulated prepaid hours	621.35	636.35	646.35	656.35	666.35
1944.	1-29	2-5	2-12	2-19	2-26
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	50.00	50.00
Prepaid Hours	10.00	10.00	10.00	10.00	10.00
Prepaid Hours bro't forward	666.35	676.35	686.35	696.35	706.35
Accumulated prepaid hours	676.35	686.35	696.35	706.35	716.35
	3-4	3-11	3-18	3-25	4-1
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	53.00	50.00	57.00	53.00	53.00
Prepaid Hours	7.00	10.00	3.00	7.00	7.00
Prepaid Hours bro't forward	716.35	723.35	733.35	736.35	743.35
Accumulated prepaid hours	723.35	733.35	736.35	743.35	750.35

1051

	Week Ending 4-8	Week Ending 4-15	Week Ending 4-22	Week Ending 4-29	Week Ending 5-6
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	50.00	50.00
Prepaid Hours	10.00	10.00	10.00	10.00	10.00
Prepaid Hours bro't forward	750.35	760.35	770.35	780.35	790.35
Accumulated prepaid hours	760.35	770.35	780.35	790.35	800.35
	5-13	5-20	5-27	6-3	6-10
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	56.30	63.45	50.00
Prepaid Hours	10.00	10.00	3.30	3.45	10.00
Prepaid Hours bro't forward	800.35	810.35	820.35	824.05	820.20
Accumulated prepaid hours	810.35	820.35	824.05	820.20	830.20
	6-17	6-24	7-1	7-8	7-15
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	41.00	50.00
Prepaid Hours	10.00	10.00	10.00	19.00	10.00
Prepaid Hours bro't forward	830.20	840.20	850.20	860.20	879.20
Accumulated prepaid hours	840.20	850.20	860.20	879.20	889.20

(1M-9/20/41-J)

1052

Name J. N. V. Terrell. Branch Jax Paper Co.

1943.	Week Ending 5-22	Week Ending 5-29	Week Ending 6-5	Week Ending 6-19	Week Ending 6-26
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	68.00	50.00	50.00
Prepaid Hours	10.00	10.00	8.00	10.00	10.00
Prepaid Hours bro't forward	297.35	307.35	317.35	309.35	319.35
Accumulated prepaid hours	307.35	317.35	309.35	319.35	329.35
	7-3	7-10	7-17	7-24	7-31
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	41.00	50.00	50.00	50.00
Prepaid Hours	10.00	19.00	10.00	10.00	10.00
Prepaid Hours bro't forward	329.35	339.35	358.85	268.35	378.35
Accumulated prepaid hours	339.35	358.35	368.35	378.35	388.35
	8-7	8-14	8-21	8-28	9-4
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	50.00	50.00
Prepaid Hours	10.00	10.00	10.00	10.00	10.00
Prepaid Hours bro't forward	388.35	398.35	408.35	418.35	428.35
Accumulated prepaid hours	398.35	408.35	418.35	428.35	438.35

1053

	Week Ending 9-11	Week Ending 9-18	Week Ending 9-25	Week Ending 10-2	Week Ending 10-9
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	41.00	50.00	50.00	50.00	50.00
Prepaid Hours	19.00	10.00	10.00	10.00	10.00
Prepaid Hours bro't forward	438.35	457.35	467.35	477.35	487.35
Accumulated prepaid hours	457.35	467.35	477.35	487.35	497.35
	10-16	10-23	10-30	11-6	11-13
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	50.00	50.00
Prepaid Hours	10.00	10.00	10.00	10.00	10.00
Prepaid Hours bro't forward	497.35	507.35	517.35	527.35	537.35
Accumulated prepaid hours	507.35	517.35	527.35	537.35	547.35
	11-20	11-27	12-4	12-11	12-18
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	45.00	50.00	50.00	50.00
Prepaid Hours	10.00	15.00	10.00	10.00	10.00
Prepaid Hours bro't forward	547.35	557.35	572.35	582.35	592.35
Accumulated prepaid hours	557.35	572.35	582.35	592.35	602.35

Name J. N. V. Terrell. Branch Jax Paper Co.

1942.	Week Ending 10-24-42	Week Ending 10-31	Week Ending 11-7	Week Ending 11-14	Week Ending 11-21
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	52.05	52.45	52.05	54.00	52.45
Prepaid Hours	7.55	7.15	7.55	6.00	7.15
Prepaid Hours bro't forward	.....	7.55	15.10	23.05	29.05
Accumulated prepaid hours	7.55	15.10	23.05	29.05	36.20
	11-28	12-5	12-12	12-19	12-26
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	45.45	52.00	53.20	56.25	36.30
Prepaid Hours	14.15	8.00	6.40	3.35	23.30
Prepaid Hours bro't forward	36.20	50.35	58.35	65.15	68.50
Accumulated prepaid hours	50.35	58.35	65.15	68.50	92.20
1943.	1-2	1-9	1-16	1-23	1-30
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	42.10	52.20	51.25	51.30	51.25
Prepaid Hours	17.50	7.40	8.35	8.30	8.35
Prepaid Hours bro't forward	92.20	110.10	117.50	126.25	134.55
Accumulated prepaid hours	110.10	117.50	126.25	134.55	143.30

	Week Ending 2-6	Week Ending 2-13	Week Ending 2-20	Week Ending 2-27	Week Ending 3-6
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.40	50.15	50.00	50.00	50.00
Prepaid Hours	9.20	9.45	10.00	10.00	10.00
Prepaid Hours bro't forward	143.30	152.50	162.35	172.35	182.35
Accumulated prepaid hours	152.50	162.35	172.35	182.35	192.35

	3-13	3-20	3-27	4-3	4-10
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	45.00	50.00	50.00	50.00	50.00
Prepaid Hours	15.00	10.00	10.00	10.00	10.00
Prepaid Hours bro't forward	192.35	207.35	217.35	227.35	237.35
Accumulated prepaid hours	207.35	217.35	227.35	237.35	247.35

	4-17	4-24	5-1	5-8	5-15
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	50.00	50.00
Prepaid Hours	10.00	10.00	10.00	10.00	10.00
Prepaid Hours bro't forward	247.35	257.35	267.35	277.35	287.35
Accumulated prepaid hours	257.35	267.35	277.35	287.35	297.35

(1M-9/20/41-J)

GOVT. EXHIBIT No. 9.

Filed in Evidence Jun. 18, 1946.

Employment Notice.

Branch Jacksonville Paper Co.
Date Oct. 22, 1942.

Name J. Norman V. Terrell. Social Security No. 266-07-5563.

Starting Date Oct. 19, 1942. Rate of pay $40.25 per week.

Rate of pay per hr. $ 57½; 40 hrs. at 57½, 20 hrs. at 86¼.

Total Scheduled hours 60. Total Pay 40.25.

Truck Drivers under ICC Regulations ..... hrs. at .... Total .....

Drawing Acc't: Salary..... Expense..... Total.....

Position Statistical Clerk. Race White.

Date of birth March 6, 1909. Age 33.

Male √ Female ..... Married √ Single .....

Position application herewith ....., will follow.....

Bond Application herewith ....., will follow.....

Group Insurance application herewith ....will follow.... Declined √

Group Insurance card herewith ..... will follow.....

Truck Drivers & Warehouse Employees: Physical examination report herewith ....., will follow.....

Additional help—Yes..... No..... Replacing.....

Home address 336 East 15th St., Phone 5-8547-J.

Employee's Signature J. NORMAN V. TERRELL.

O. R. RABORN, Manager.
C. K. THIRDFIELD, Cashier.

(2m-5/23/41-J.)

GOVT. EXHIBIT No. 10.

Filed in Evidence Jun. 18, 1946.

East Coast Paper Co.—West Palm Beach.

Purchases for August, 1945.

Received from outside of state	$3,766.14
Received from Jax Paper Co.	$ 962.00
Total	$4,728.14

472814) 376614 (80— 79½ from outside.
3782512

Tampa Paper Co.

Purchases for August, 1945.

From Outside of State—Shippined in Directly—

Coarse	$16,671.49
Fine	$12,948.26

Jacksonville Paper Co.—

Coarse	$13,411.16
Fine	$ 3,508.65
	$46,539.56

4653956) 2961975 (63½% Outside Purchases.
27923736

1696014
13961868

2998272

Central Paper Co., Orlando, Florida.

Purchases for August, 1945.

Outside purchases shipped direct	$10,456.33
Received from Jax Paper Co.	$ 7,488.92
Total Purchases	$17,945.25

1794525) 1045633 (57% outside purchases.
8972625

1483705
12561675

Pinellas Paper Co.

Purchases for August, 1945.

Outside Purchases Received Direct from Out of State	$5,994.74
Received or Billed from Jax Paper Co.	$3,145.36
	$9,140.10

914010) 599474 (65½%
5484060

510680
4570050

536750

Lakeland Paper Co.

Purchases for August, 1945.

Purchases received directly from outside of state	$1,963.81
Purchases received from Jax Paper Co.	4,038.72
	$6,002.53

600253) 196381 (32½% received from outside sources
1800759

163051

GOVT. EXHIBIT No. 15.

Filed in Evidence Jun. 20, 1946.

Received Feb. 10, 1944, Jacksonville Paper Co., Jacksonville, Fla.

Branch Savannah.
Date 1-19-44.

I understand that I am employed to work 60 hours. That I will be paid for 40 hours at 50 and 20 hours at 75. Total 60 hours for $35.00.

That I am to sign Time Sheet filling in actual time in and out—morning, noon and night.

My home address is 22 W. Taylor St., Savannah, Ga., and I will notify my employer of any change in address.

(Signed) MARGARET OETGEN.
(Full Name)

(2M-9/20/41-J).
Dated 1-19-44.

Received Feb. 10, 1944, Jacksonville Paper Co., Jacksonville, Fla.

Employment Notice.

Branch Savannah.
Date 1-19-44.

Name Margaret Oetgen. Social Security No. 255-05-7175.

Starting Date 1-19-44. Rate of pay $..... per week.

Rate of pay per hr. $..... 40 hrs. at 50, 20 hrs. at 75.

Total Scheduled hours 60. Total Pay $35.00.

Truck Drivers under ICC Regulations ..... hrs. at .....
Total .....

Drawing Acc't: Salary ..... Expense ..... Total .....

Position Bookeeper. Race White.

Date of birth 8-17-08. Age 35.

Male ..... Female √ Married ..... Single √.

Position application herewith √, will follow .....

Bond Application herewith √, will follow .....

Group Insurance application herewith X, will follow X
Declined √.

Group Insurance card herewith √, will follow √

Truck Drivers & Warehouse Employees: Physical examination report herewith ....., will follow .....

Additional help—Yes ..... No √ Replacing A. T. S. Wright.

Home address 22 West Taylor St., Savh., Ga.

Employee's signature MARGARET OETGEN.

R. E. COX, Cashier.

H. L. HUMPIDGE, Manager.

(2m-5/23/41-J.)

Jacksonville, Fla., June 10, 1944.

Mr. H. L. Humpidge,
Savannah, Ga.

Referring to your letter of June 7th written to Mr. M. R. McGehee regarding Miss Oetgen's bonus check. We have rechecked these figures and find that even though records on all employees of less than one year were checked, or were supposed to be checked including the extra labor pay, in the case of Miss Oetgen the party checking these records failed to include extra labor pay in the amount of $128.75. This will give Miss Oetgen a total bonus for the year of $98.07 instead of $78.75 and would make the monthly payments $8.17 less withholding tax, net $6.54 instead of $5.25 as previously sent. We are attaching hereto check covering additional payment of $1.61 less withholding tax 32¢, net $1.29 adjusting same for the first month. Future checks of course will be made out on the corrected amount.

As to the second paragraph of your letter regarding bonus that was due Miss Oetgen when she previously left our employ. You understand of course that these bonus payments are not made to employees leaving the service. Any amount due when employee leaves the service is automatically canceled.

Yours truly,
A. S. REINOEHL.

ASR/L.

Atlantic Paper Company,
West Broad & River Streets,
Savannah, Georgia.

Received Jun. 8, 1944.
6/9 P. M. 6/10 No Steno.

Savannah, Georgia, June 7, 1944.

A. S. R.,
Jacksonville.

Mr. M. R. McGehee.

In figuring Miss Oetgen's bonus you have only given her credit for the time which she was on the payroll. Miss Oetgen went to work on the 19th of January and, through no fault of hers, was not placed on the payroll until a month later. Please note petty cash January 22nd and February 12th. We figure that Miss Oetgen has $1.23 per month more coming than is shown on her check. Please check into this and advise.

We do not know just what the status of an employee is with regard to bonus earned when that party has left our employ. Miss Oetgen you will recall left us about a year ago to work in the Army Air Force here in Savannah and was subsequently re-employed. At the time Miss Oetgen left our employ she had earned a considerable bonus which, of course, was stopped. This is the first case of this kind we have ever had and we will appreciate your reaction.

We are holding Miss Oetgen's check awaiting your check of the records.

H. L. HUMPIDGE,
(H. L. Humpidge),
Per MB.

hlh/p.

Jacksonville, Fla., June 6, 1944.

Mr. R. E. Cox,
Savannah, Ga.

Dear Sir:

Referring to your letter of June 5th regarding bonus payments.

As to the first employee referred to by you, that is, Eddie Gibson, it has always been customary every since the bonus system was established to figure all employees who had been on the payroll for less than one year but who were actually on the payroll at the close of the year on the basis of 15% of the amount actually paid to them during the year, and this of course has always been figured on both the regular payroll and extra labor payroll.

In the case of Miss Oetgen, as well as yourself, we believe you will find that the withholding tax has been properly figured, for as you understand, when we make up the weekly payroll we give you the benefit of the entire exemption to which you are entitled, and by referring to the payroll you will note that even on your weekly payroll you are paying 20% on a portion of your salary. Naturally, there is no additional exemptnon that can be applied against the bonus, therefore, on anyone who is already in the 20% bracket the entire amount of the bonus will be subject to 20% withholding tax.

We are cancelling the check you have returned on S. C. James in the amount of $4.17.

Yours truly,
A. S. REINOEHL.

ASR/L.

Atlantic Paper Company,
West Broad & River Streets,
Savannah, Georgia.

Received Jun. 6, 1944.

Savannah, Georgia, June 5, 1944.

Jacksonville,
A. S. Reinoehl.

There seems to be something wrong with the handling of the bonus payments. You show $5.50 as June payment on bonus for Eddie Gibson. According to our records this man has only been on the payroll for two weeks with total drawings through payroll of $44.00 and certainly he would not be entitled to $5.50 bonus per month unless you figured his salary paid through petty cash.

On Miss Oetgen's bonus payment you have figured 20% withholding tax, not having taken into consideration her dependents. On the writer's you have done the same thing. On the writer's he figures that his deduction should be $3.90 or an over-deduction for tax of $5.90.

We are not going to turn Gibson's check over to him until we hear from you.

Please let us hear from you in connection with all three as soon as practicable.

We are returning herewith S. C. James check for $4.17 as he left our employ on May 27th.

R. E. COX,
COX.

Rec/p.

GOVT. EXHIBIT No. 16.

Filed in Evidence Jun. 20, 1946.

Branch .....

Name Kennth Voyle.

	Week Ending 5-6-44	Week Ending 5-13-44	Week Ending
Scheduled Hours	55:00	55:00	
Time Worked	56:00	50:20	
Credit	1:00	4:40	
Credit Bro't Forward	....	1:00	Left
Accumulated Credit	1:00	3:40	

(500-8/21/40-j).

DEFENDANTS' EXHIBIT A.

Filed in Evidence Jun. 20, 1946.

Branch Tallahassee, Fla.
Date 11-30-42.

I understand that I am employed to work 60 hours. That I will be paid for 40 hours at 36¢ and 20 hours at 54¢. Total 60 hours for $25.20.

That I am to sign Time Sheet filling in actual time in and out—morning, noon and night.

My home address is Star Route, Tallahassee, Fla., and I will notify my employer of any change in address.

(Signed) RICHARD FULLER BOYKIN.
(Full Name)

Dated 12-1-4.

(2M-9/20/41-J)

DEFENDANTS' EXHIBIT "B".

Filed in Evidence Jun. 20, 1946.

Received Nov. 24, 1944.

Pay Roll Change.

Branch or Location Tallahassee, Fla.

Department CP.

Re: R. F. Boykin.

Position Shipping Clerk.

Wages or Salary changes; also drawing account.

Increase ..... Decrease .....

From:

$ 40 Per Hr. For 40 Hrs.	Amount.	$16.00
And $ 60 Per √ For 20 Hrs.	Amount	$12.00
Total 60 Hrs.	Amount	$28.00

To:

$45 Per Hr. For 40 Hrs.	Amount	$18.00
And $ 67½ Per √ For 20 Hrs.	Amount	$13.50
Total ..... Hrs.	Amount	$31.50

Effective Date 11/20/44.

Position change from ..... To .....

Department change from None ..... To .....

Reason for change: .....

Pay Roll adjusted week ending 11/25/44. A.G.S.

Date of last change: 3/22/43.

Authority or basis for increase or decrease: .....

Approved .....

T. P. THIGPEN, Mgr.

J. N. GREEN, Cashier.

DEFENDANT'S EXHIBIT "C".

Filed in Evidence Jun. 19, 1946.

Southern Industries Company Employees Failing to Punch Clock 12 Months Ending 5-31-46.

Week Ending	Clock No.	Name	Clock Registered		Hrs. Pd.
7- 4-45	74	W. J. Jackson	7:48—12:00	?—6:01	4
7-18-45	100	Sadie Yarber	?—12:02	12:27—4:37	4
7-18-45	103	E. C. Smith	7:50—12:02	12:26—?	4
8-15-45	131	Leon Walker	7:51—12:01	12:28—?	4
1- 9-46	134	P. L. Perkins	7:48—12:04	12:10—?	4
3- 6-46	131	Leon Walker	7:51—?	12:15—6:05	5½
3- 6-46	130	F. C. Vermeulen	7:57—12:00	12:17—?	4
3-27-46	86	A. Hamilton	?—12:00	12:19—6:01	5½
5-15-46	112	Mary Brown	5:45—10:36	10:57—?	4½
5-29-46	156	*Wm. Brown	7:53—?	12:14—6:02	4 *
5-29-46	141	W. H. Sheppard	7:54—12:03	3:15—?	4

* Should have been 5½ hours. Being corrected week ending 6-19-46.

1069

DEFENDANT'S EXHIBIT "D

Filed in Evidence Jun. 19, 194

Daily Time Sheet.

Ex. Labor.

Branch Tallahassee, Fla.

Name	In A. M.	Signature	Out Noon	Signature	In Noon	Signature
John Sullivan	9.40	X	12	X	1	X
Dorsey Johnson	9.40	D. J.	12	D. J.	1	D. J.
Elven Davis	9.40	Elven Davis	12	E. D.	1	E. D.
Charley Scott	10.45	C. S.	12	C. S.	1	C. S.
Edward King	....	E. King	....	E. King	1.15	E. King
Edward King	8	E. King	12	E. King	1	E. King
Edward King	8	E. King	12	E. King	1	E. King
Edward King	8	E. King	12	E. King	1	E. King
Edward King	8	E. King	12	E. King	1	E. King
Edward King	8	E. King	1.00	E. King		

Approved T. P. THIGPEN, Manager.

DEFENDANT'S EXHIBIT "D".

Filed in Evidence Jun. 19, 1946.

Daily Time Sheet.
Ex. Labor.

Date 5-13-46—5-18-46.

Signature	In Noon	Signature	Out P. M.	Signature	In	Out	After Hours Signature		Total
X	1	X	5	X	....	....	.....	6.20	Pd.
D. J.	1	D. J.	5	D. J.	....	....	.....	6.20	Pd.
E. D.	1	E. D.	5	E. D.	....	....	.....	6.20	Pd.
C. S.	1	C. S.	5	C. S.	....	....	.....	5.15	Pd.
E. King	1.15	E. King	6	E. King	....	....	.....	3.45	
E. King	1	E. King	6	E. King	....	....	.....	9	
E. King	1	E. King	6	E. King	....	....	.....	9	44¾
E. King	1	E. King	6	E. King	....	....	.....	9	
E. King	1	E. King	6	E. King	....	....	.....	5	
E. King									

Correct J. H. GREEN, Cashier.

DEFENDANTS' EXHIBIT "E".

Filed in Evidence Jun. 19, 1946.

Branch Everglade Paper Co.
Date 11/18/43.

I understand that I am employed to work 48 hours. That I will be paid for 40 hours at .48½ and 8 hours at .72¾. Total 48 hours for $25.22.

That I am to sign Time Sheet filling in actual time in and out—morning, noon and night.

My home address is 7000 S. W. 8th St., and I will notify my employer of any change in address.

(Signed) NELLE MOORE COOKE.
(Full Name)

Dated 11-18-43.

(2M-9/20/41-J.)

Branch Jacksonville.
Date 10/4/41.

I understand that my scheduled hours have been changed from 51¾ hours to 53½ hours and rate of pay from ..... hours at..... and ..... hours at..... to ..... hours at .....and ..... hour at .....

Above change effective 9/29/41.

(Signed) FRANCES FULLINGTON.

Date Signed 10/3/41.

DEFENDANTS' EXHIBIT "F".

Filed in Evidence Jun: 19, 1946.

Name C. D: Fraser. Branch.....

1946.	Week Ending 4-6	Week Ending 4-13	Week Ending 4-20	Week Ending 4-27	Week Ending 5-4
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	52.40	111 37.45	51.20	52.25	52.20
Prepaid Hours	7.20	22.15	8.40	7.35	7.40
Prepaid Hours bro't forward	1566.45	1574.05	1596.20	1605.00	1612.35
Accumulated prepaid hours	1574.05	1596.20	1605.00	1612.35	1620.15
	5-11	5-18	5-25	6-1	
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	
Time worked	51.45	51.55	51.45	53.10	
Prepaid Hours	8.15	8.05	18.15	6.50	
Prepaid Hours bro't forward	1620.15	1628.30	1636.35	1644.50	
Accumulated prepaid hours	1628.30	1636.35	6144.50	1651.40	

(1M-4-10-45-L)

1072

Name C. D. Fraser. Branch.....

1945.	Week Ending 9-8	Week Ending 9-15	Week Ending 9-22	Week Ending 9-29	Week Ending 10-6
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	41.00	50.00	50.00	50.00	50.00
Prepaid Hours	19.00	10.00	10.00	10.00	10.00
Prepaid Hours bro't forward	1275.00	1294.00	1304.00	1314.00	1324.00
Accumulated prepaid hours	1294.00	1304.00	1314.00	1324.00	1334.00
	10-13	10-20	10-27	11-3	11-10
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	50.00	49.30
Prepaid Hours	10.00	10.00	10.00	10.00	10.30
Prepaid Hours bro't forward	1334.00	1344.00	1354.00	1354.00	1364.00
Accumulated prepaid hours	1344.00	1354.00	1364.00	1364.00	1374.30
	11-17	11-24	12-1	12-8	12-15
Scheduled hours for which paid.....	60.00	60.00	60.00	60.00	60.00
Time worked	51.50	43.10	52.45	52.50	53.00
Prepaid Hours	8.10	16.50	7.15	7.10	7.00
Prepaid Hours bro't forward	1374.30	1382.40	1399.30	1406.45	1413.55
Accumulated prepaid hours	1382.40	1399.30	1406.45	1413.55	1420.55

1073

1945 and 46.

	Week Ending 12-22-45	Week Ending 12-29-45	Week Ending 1-5-46	Week Ending 1-12-46	Week Ending 1-19
		Xmas.	New Years		
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	53.00	33.00	43.30	53.00	52.10
Prepaid Hours	7.00	27.00	16.30	7.00	7.50
Prepaid Hours bro't forward	1420.55	1427.55	1454.55	1471.25	1478.25
Accumulated prepaid hours	1427.55	1454.55	1471.25	1478.25	1486.15
1946.	1-26	2-2	2-9	2-16	2-23
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	52.40	52.45	47.05	52.30	52.25
Prepaid Hours	7.20	7.15	12.58	7.30	7.35
Prepaid Hours bro't forward	1486.15	1493.35	1500.50	1513.45	1521.15
Accumulated prepaid hours	1493.35	1500.50	1513.45	1521.15	1528.50
	3-2	3-9	3-16	3-23	3-30
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	52.30	52.35	51.40	52.25	52.55
Prepaid Hours	7.30	7.25	8.20	7.35	7.05
Prepaid Hours bro't forward	1528.50	1536.20	1543.45	1552.05	1559.40
Accumulated prepaid hours	1536.20	1543.45	1552.05	1559.40	1566.45

(1M-4-10-45-L)

1074

Name C. D. Fraser.

Branch Jax Paper Co.

	Week Ending 2-10	Week Ending 2-17	Week Ending 2-24	Week Ending 3-3	Week Ending 3-10
1945.					
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.25	50.15	49.50	50.00
Prepaid Hours	10.00	9.35	9.45	10.10	10.00
Prepaid Hours bro't forward	941.20	951.20	960.55	970.40	980.50
Accumulated prepaid hours	951.20	960.55	970.40	980.50	990.50
	3-17	3-24	3-31	4-7	4-14
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.10	50.10	50.00	50.00	50.00
Prepaid Hours	9.50	9.50	10.00	10.00	10.00
Prepaid Hours bro't forward	990.50	1000.40	1010.30	1020.30	1030.30
Accumulated prepaid hours	1000.40	1010.30	1020.30	1030.30	1040.30
	4-21	4-28	5-5	5-12	5-19
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	42.30	50.00
Prepaid Hours	10.00	10.00	10.00	17.30	10.00
Prepaid Hours bro't forward	1040.30	1050.30	1060.30	1070.30	1088.00
Accumulated prepaid hours	1050.30	1060.30	1070.30	1088.00	1098.00

1075

	Week Ending 5-26	Week Ending 6-2	Week Ending 6-9	Week Ending 6-16	Week Ending 6-23
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	50.00	50.00	50.00	50.00
Prepaid Hours	10.00	9.00	10.00	10.00	10.00
Prepaid Hours bro't forward	1098.00	1108.00	1117.00	1128.00	1138.00
Accumulated prepaid hours	1108.00	1117.00	1128.00	1138.00	1148.00
	6-30	7-7 4th	7-14	7-21	7-28
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	41.00	50.00	50.00	50.00
Prepaid Hours	10.00	19.00	10.00	10.00	10.00
Prepaid Hours bro't forward	1148.00	1158.00	1177.00	1187.00	1197.00
Accumulated prepaid hours	1158.00	1177.00	1187.00	1197.00	1207.00
	8-4	8-11	8-18	8-25	9-1
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.00	41.00	41.00	50.00	50.00
Prepaid Hours	10.00	19.00	19.00	10.00	10.00
Prepaid Hours bro't forward	1207.00	1217.00	1236.00	1255.00	1265.00
Accumulated prepaid hours	1217.00	1236.00	1255.00	1265.00	1275.00

(1M-9/20/41-J)

1076

Name C. D. Fraser. Branch Jax Paper Co.

1944.	Week Ending 7-15	Week Ending 7-22	Week Ending 7-29	Week Ending 8-5	Week Ending 8-12
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	50.00	50.00	50.20	50.30	50.00
Credit	10.00	10.00	9.40	9.30	10.00
Credit Bro't Forward	588.40	598.40	608.40	618.20	627.50
Accumulated Credit	598.40	608.40	618.20	627.50	637.50
	8-19	8-26	9-2	9-9	9-16
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	50.00	50.00	50.00	41.00	50.00
Credit	10.00	10.00	10.00	19.00	10.00
Credit Bro't Forward	637.50	647.50	657.50	667.50	686.50
Accumulated Hours	647.50	657.50	667.50	686.50	696.50
	9-23	9-30	10-7	10-14	10-21
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	36.00	50.00	50.00	50.00	41.00
Credit	24.00	10.00	10.00	10.00	19.00
Credit Bro't Forward	696.50	720.50	730.50	740.50	750.50
Accumulated Hours	720.50	730.50	740.50	750.50	769.50

1077

	Week Ending 10-28	Week Ending 11-4	Week Ending 11-11	Week Ending 11-18	Week Ending 11-25
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	50.00	50.00	50.00	50.10	45.35
Credit	10.00	10.00	10.00	9.50	14.25
Credit Bro't Forward	769.50	779.50	789.50	799.50	809.40
Accumulated Hours	779.50	789.50	799.50	809.40	824.05
	12-2	12-9	12-16	12-23	12-30
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	50.35	49.40	49.40	48.05	41.10
Credit	9.25	10.20	10.20	11.55	18.50
Credit Bro't Forward	824.05	833.30	843.50	854.10	866.05
Accumulated Hours	833.30	843.50	854.10	866.05	884.55
1945.	1-6	1-13	1-20	1-27	2-3
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	41.30	50.15	51.05	50.25	50.20
Credit	18.30	9.45	8.55	9.35	9.40
Credit Bro't Forward	844.55	903.25	913.10	922.05	731.40
Accumulated Hours	903.25	913.10	922.05	931.40	941.20

(500-8/21/40-j)

1078

Name C. D. Fraser. Branch Jax. Paper Co.

1943 and 44.	Week Ending 12-18	Week Ending 12-25	Week Ending 1-1-44	Week Ending 1-8	Week Ending 1-15
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	48.30	41.00	44.15	50.00	50.10
Credit	11.30	19.00	15.45	10.00	9.50
Credit Bro't Forward	271.05	282.35	301.35	317.20	327.20
Accumulated Credit	282.35	301.35	317.20	327.20	337.10
1944.	1-22	1-29	2-5	2-12	2-19
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	50.40	54.00	50.30	50.00	50.00
Credit	9.20	6.00	9.30	10.00	10.00
Credit Bro't Forward	337.10	346.30	352.30	362.00	372.00
Accumulated Hours	346.30	352.30	362.00	372.00	382.00
	2-26	3-4	3-11	3-18	3-25
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	50.00	50.15	50.00	50.00	50.00
Credit	10.00	9.45	10.00	10.00	10.00
Credit Bro't Forward	382.00	392.00	401.45	411.45	421.45
Accumulated Hours	392.00	401.45	411.45	421.45	431.45

1079

	Week Ending 4-1	Week Ending 4-8	Week Ending 4-15	Week Ending 4-22	Week Ending 4-29
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	50.00	50.00	50.30	50.00	50.00
Credit	10.00	10.00	9.30	10.00	10.00
Credit Bro't Forward	431.45	441.45	451.45	461.15	471.15
Accumulated Hours	441.45	451.45	461.15	471.15	481.15
	5-6	5-13	5-20	5-27	6-3
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	50.00	50.00	50.00	51.55	50.00
Credit	10.00	10.00	10.00	8.05	10.00
Credit Bro't Forward	481.15	491.15	501.15	511.15	519.20
Accumulated Hours	491.15	501.15	511.15	519.20	529.20
	6-10	6-17	6-24	7-1	7-8
Scheduled Hours	60.00	60.00	60.00	60.00	60.00
Time Worked	49.40	50.00	50.00	50.00	41.00
Credit	10.20	10.00	10.00	10.00	19.00
Credit Bro't Forward	529.20	539.40	540.40	559.40	569.40
Accumulated Hours	539.40	549.40	559.40	569.40	588.40

(500-8/21/40-j)

1080

Name C. D. Fraser. Branch Jax Paper Co.

1943.	Week Ending 5-22	Week Ending 5-29	Week Ending 6-5	Week Ending 6-12	Week Ending 6-19
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	51.55	54.45	52.40	52.50	51.15
Prepaid Hours	8.05	5.15	7.20	7.10	8.45
Prepaid Hours bro't forward		8.05	13.20	20.40	27.50
Accumulated prepaid hours	8.05	13.20	20.40	27.50	36.35
	6-26	7-3	7-10	7-17	7-24
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	51.35	51.30	46.45	53.20	50.30
Prepaid Hours	8.25	8.30	13.15	6.40	9.30
Prepaid Hours bro't forward	36.35	45.00	53.30	66.45	73.25
Accumulated prepaid hours	45.00	53.30	66.45	73.25	82.55
	7-31	8-7	8-14	8-21	8-28
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.50	51.45	54.25	53.25	52.55
Prepaid Hours	9.10	8.15	5.35	6.35	7.05
Prepaid Hours bro't forward	82.55	92.05	100.20	105.55	112.30
Accumulated prepaid hours	92.05	100.20	105.55	112.30	119.35

1081

Name C. D. Fraser. Branch Jax Paper Co.

	Week Ending 9-4	Week Ending 9-11	Week Ending 9-18	Week Ending 9-25	Week Ending 10-2
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	52.10	42.30	53.15	51.45	51.15
Prepaid Hours	7.50	17.30	6.45	8.15	8.45
Prepaid Hours bro't forward	119.35	127.25	144.55	151.40	159.55
Accumulated prepaid hours	127.25	144.55	151.40	159.55	168.40
	10-9	10-16	10-23	10-30	11-6
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	50.45	51.00	50.40	51.15	51.15
Prepaid Hours	9.15	9.00	9.20	8.45	8.45
Prepaid Hours bro't forward	168.40	177.55	186.55	196.15	205.00
Accumulated prepaid hours	177.55	186.55	196.15	205.00	213.45
	11-13	11-20	11-27	12-4	12-11
Scheduled hours for which paid	60.00	60.00	60.00	60.00	60.00
Time worked	51.05	49.00	41.30	50.15	50.50
Prepaid Hours	8.55	11.00	18.30	9.45	9.10
Prepaid Hours bro't forward	213.45	222.40	233.40	252.10	261.55
Accumulated prepaid hours	222.40	233.40	252.10	261.55	271.05

(1M-9/20/41-J)

1082

Name G. A. Rice. Branch.....

1946.	Week Ending 4-27	Week Ending 5-4	Week Ending 5-11	Week Ending 5-18	Week Ending 5-25
Scheduled hours for which paid	55.00	55.00	55.00	55.00	55.00
Time worked	46.35	47.50	43.55	43.10	47.25
Prepaid Hours	8.25	7.10	11.05	11.50	7.35
Prepaid Hours bro't forward	312.10	320.35	327.45	338.50	350.40
Accumulated prepaid hours	320.35	327.45	338.50	350.40	358.15
	6-1				
Scheduled hours for which paid	55.00	.....	.....	.....	.....
Time worked	47.45	.....	.....	.....	.....
Prepaid Hours	7.15	.....	.....	.....	.....
Prepaid Hours bro't forward	358.15	.....	.....	.....	.....
Accumulated prepaid hours	365.30	.....	.....	.....	.....
Scheduled hours for which paid	.....	.....	.....	.....	.....
Time worked	.....	.....	.....	.....	.....
Prepaid Hours	.....	.....	.....	.....	.....
Prepaid Hours bro't forward	.....	.....	.....	.....	.....
Accumulated prepaid hours	.....	.....	.....	.....	.....

(1M-4-10-45-L)

1083

Name G. A. Rice. Branch.....

1945	Week Ending 9-22	Week Ending 9-20	Week Ending 10-6	Week Ending 10-13	Week Ending 10-20
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	48.20	49.10	48.55	48.30	48.30
Prepaid Hours	6.40	5.50	6.05	6.30	6.30
Prepaid Hours bro't forward	.....	6.40	12.30	18.35	25.05
Accumulated prepaid hours	6.40	12.30	18.35	25.05	31.35
	10-27	11-3	11-10	11-17	12-1
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	48.25	36.35	47.55	26.05	30.35
Prepaid Hours	6.35	18.15	7.05	28.55	24.25
Prepaid Hours bro't forward	31.35	38.10	46.25	53.30	82.25
Accumulated prepaid hours	38.10	46.25	53.30	82.25	106.50
1945 and 46.	12-8	12-15	12-22-45	12-29-45	1-5-46
				Xmas	New Years
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	47.50	57.45	46.50	30.40	39.25
Prepaid Hours	7.10	7.15	8.10	24.20	15.35
Prepaid Hours bro't forward	106.50	114.00	121.45	129.25	153.45
Accumulated prepaid hours	114.00	721.15	129.25	153.45	169.20

1084

1946.	1-12-46	1-19	1-26	2-2	2-9
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	39.15	45.30	47.30	47.40	48.00
Prepaid Hours	15.45	9.30	7.30	7.20	7.00
Prepaid Hours bro't forward	169.20	185.05	194.35	202.05	209.25
Accumulated prepaid hours	185.05	194.35	202.05	209.25	216.25
	2-16	2-23	3-2	3-9	3-16
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	48.25	45.45	30.20	48.10	48.20
Prepaid Hours	6.35	9.15	24.40	6.50	6.40
Prepaid Hours bro't forward	216.25	223.00	232.15	256.55	263.45
Accumulated prepaid hours	223.00	232.15	256.55	263.45	270.25
	3-23	3-30	4-6	4-13	4-20
Scheduled hours for which paid.....	55.00	55.00	55.00	55.00	55.00
Time worked	40.10	48.20	39.30	48.15	48.00
Prepaid Hours	5.50	6.40	15.30	6.45	7.00
Prepaid Hours bro't forward	270.25	276.15	282.25	298.24	305.10
Accumulated prepaid hours	276.15	282.55	298.25	305.10	312.10

1085

DEFENDANTS' EXHIBIT "G".

Filed in Evidence Jun. 19, 1946.

Pay Roll Refund.

Branch Lakeland. Date 11/3/45.

Name of Employee C. Stevens.

Pay Roll Dep't.,
Jacksonville, Fla.

Deduct from our pay roll week ending 11/10 $6.43 made up as follows:

Salary	7.20	
Expenses	....	
Total		$7.20
Less:		
....	....	
Payroll Tax	.07	
War Bonds	....	
Withholding	.70	
On account	....	
Insurance	....	
....	....	
Total		$ .77
Net Deduction		$6.43

We are holding the above amount in our Petty Cash and will use this on our pay roll when you make deduction.

Yours truly,
E. A. LALLANCE, Cashier.

DEFENDANT'S EXHIBIT "H" (WITH SUPPLEMENT).

Filed in Evidence Jun. 20, 1946.

G. S. Fairfield, Orlando, Fla.

Employed 1-1-43 @ $35.00 per week, effective 6-1-43 Bonus $19.78 per month.

Effective 6-1-44 salary $41.25 weekly, effective 6-1-44 Bonus $35.75 per month.

Effective 6-1-45 salary $43.50 weekly, effective 6-1-45 Bonus $35.75 per month.

Present rate $45.00 weekly. Effective 6-1-46 Bonus 20%.

B. L. Fields, Jacksonville, Fla.

Present rate of pay $40.00 per week. Effective 6-1-46 bonus 20%.

Employed 4-2-45 @ $40.00 per week. Bonus 6-1-45 $4.50 per month.

S. D. Robinson, Pensacola, Fla.

Employed 7-31-44 @ $41.25 per week.

Effective 6-1-45 weekly salary $41.25. Effective 6-1-45 bonus $19.94 per month.

Present rate $43.50 weekly. Effective 6-1-46 bonus 20%.

Thos. Passmore, Jacksonville, Fla.

Present rate of pay $45.00 weekly. Effective 6-1-46 bonus 20%.

Employed 1-24-44 @ $40.00 per week. Bonus 6-1-45 $34.67 per month.

J. H. Green, Tallahassee, Fla.

Employed 11-16-42 @ $40.00 per week.

Effective 6-1-43 salary $40.00 weekly. Effective 6-1-43 bonus $26.00 per month.

Effective 6-1-44 salary $40.00 weekly. Effective 6-1-44 bonus $34.67 per month.

Effective 7-7-45 salary $43.50 weekly. Bonus $34.67 per month.

After wage freeze was lifted salary for period of from 1943 to 1945 was adjusted by payment of $500.00 during Dec. 1945.

Present rate $45.00 per week. Bonus 20%.

E. H. Lallance, Lakeland, Fla.

Employed 8-28-44 @ $40.00 per week. Effective 6-1-45 bonus $20.13 per month.

Present rate of pay $42.50 per week. Effective 6-1-45 bonus 20%.

P. F. White, Florida Paper Co.

Employed 1-22-45 @ $35.00 per week. Bonus 6-1-45 $8.81 per month.

Present rate of pay $38.50 per week. Effective 6-1-46 bonus 20%.

List of Allegedly Misclassified Employees, Drawing Salary and Bonus, Supplementing Defendants' Exhibit "H"

D. Filed Aug. 24, 1946, Jacksonville, Fla., Edwin R. Williams, Clerk.

In the District Court of the United States for the Southern District of Florida, Jacksonville Division.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff,

vs. No. 209 J. Civil.

Jacksonville Paper Company, a Corporation, et al., Defendants.

Claude J. Jones, Pensacola, Florida.	Shipping Clerk—Weekly rate of pay $35.00. Effective 6-1-46 bonus of $7.00 per week. Total weekly earnings $42.00.
Margaret Oetgen, Savannah, Georgia.	Former Bookkeeper & Cashier. At the time she left our employ 3-17-45 she was earning 54¢ per hr., a total of $37.80 per week, plus a bonus of $8.17 per month.
Roy E. Butts, Macon, Georgia.	Shipping Clerk. Employed from 5-15-44 to 7-8-44 at a weekly rate of $30.00.

J. B. Dupree, Tampa, Florida.	Shipping Clerk. Employed from 8-13-45 to 9-29-45 at a weekly salary rate of $35.00.
Henry Fleck, St. Petersburg, Fla.	Branch Cashier at a weekly rate of $42.50 plus a bonus of $36.83 per month. He is now (since 6-1-46) Branch Manager at a weekly rate of $57.50 plus 15% of the net profits.
J. O. Gilchrist, Pensacola, Florida.	Sept. 1944 was Branch Cashier at salary of $41.25 per week with bonus of $35.75 per month. From Sept. 1944 to Jan. 1946 was outside Salesman on 8% commission with guaranteed drawing account of $75.00 per week. Is now Branch Manager at salary of $57.50 plus 15% of the net profits of the Branch.
H. J. Sanders, Savannah, Georgia.	Shipping Clerk—Salary rate of 43¢ per hr. weekly, earning $30.10, plus bonus of $15.68 per month.
F. L. Saunders, West Palm Beach, Fla.	Cashier—Weekly salary rate of $43.50. Plus Bonus of $8.70 per week. Effective July 1, 1946, the above was increased to base rate of $47.85.
Paul L. Mitchell, West Palm Beach, Fla.	Shipping Clerk. Weekly salary of $35.00. Plus Bonus of $7.00 Total weekly earnings $42.00. Effective July 1, 1946, the above was increased to base rate of $38.50.

R. F. Boykin, Tallahassee, Florida.	Shipping Clerk—Weekly rate of $31.50. Plus Bonus of $6.30 per week. Effective July 1, 1946, the above was increased to base rate of $35.00.
A. P. Cox, Savannah, Georgia.	Shipping Clerk. Employed 5-30-45 at rate of 50¢ per hr., weekly earnings of $35.00 and effective 6-1-46 a bonus of $7.00 per week. Effective July 1, 1946, the above was increased to base rate of $38.50.
S. A. Owenby, Jr., St. Petersburg, Fla.	Employed w/e 6-1-46 @ 50¢ per hr., 50 hr. schedule. Weekly earnings $27.50. Through error new Manager transferred him to Shipping Clerk at $35.00 per week week ending 6-15-46. This was corrected effective that same week to Warehouseman at 55¢ per hr. on a 50 hr. schedule, total of $30.25 per week.
Julian K. Davis.	Shipping Clerk—Weekly salary rate of $40.00, and effective 6-1-46 a bonus of $4.58 weekly. The above is now Salesman with guaranteed drawing account of $50.00 per week.

List of Payments Made to Employees Under Accumulated Hour Plan Covering Overtime.

H. Moultrie,	4/27/42	.41
Savannah, Georgia.	5/18/42	.60
	5/18/42	.49
	5/30/42	3.03

J. J. Samples, Savannah. Georgia.	5/11/42	.63		
F. Williams	2/23/42	.23	4/27/42	1.17
Savannah, Georgia.	4/11/42	.54	5/ 4/42	1.68
	4/21/42	2.07	5/30/42	1.46

A copy of the time sheet and extra labor voucher representing these payments is hereto attached and made a part hereof.

RAGLAND, KURZ & LAYTON,
By L. KURZ,
Attorneys for Defendants.

Extra Labor Voucher.

Branch Savh, 5-30-1942.

Cashier Office:

Pay to H. Moultrie for 6¾ hrs. at 45 per hour $3.03. Old Age Tax $.03. Net $3.00. Overtime week ending 5-30-42.

HOLLIE MOULTRIE,
Received Payment.

Approved H.W.

Social Security Number 258-01-1744.

Remarks: Nnventory.

Extra Labor Voucher.

Branch Savh., 5-18-1942.

Cashier Office:

Pay to Holly Moultrie for 1-1/12 hrs. at 45 per hour $ .49 . Old Age Tax $..... Net $ .49. O. Time week 5-16-42.

HOLLIE MOULTRIE,
Received Payment.

Approved H.W.

Social Security Number 258-01-1744.

Remarks: .....

Extra Labor Voucher.

Branch Savh., 5/18/1942.

Cashier Office:

Pay to H. Moultrie for 1.20 hrs. at .45 per hour $ .60. Old Age Tax $ .01. Net $ .59. Otime week 5-7-42.

HOLLIE MOULTRIE,
Received Payment.

Approved: H.

Social Security Number 258-01-1744.

Remarks: Short one man in whse. Williams on truck.

Extra Labor Voucher.

Branch Savh., 4/27/1942.

Cashier Office:

Pay to H. Moultrie for 55/60 hrs. at 45 per hour $ .41. Old Age Tax $..... Net $ .41.

HOLLIE MOULTRIE,
Received Payment.

Approved: X.

Social Security Number 258-01-1744.

Remarks: Overtime week 4/25/42.

1942.

Name Hollie Moultrie. Branch Savh.

	Week Ending 4-25	Week Ending 5-2	Week Ending 5-9	Week Ending 5-16	Week Ending 5-23
Scheduled Hours	52.	52.	52.	52.	52.
Time Worked	52.55	51.45	53.35	53.05	51.05
Credit	.55	.15	1.35	1.05	.55
Credit Bro't Forward	....	....	.15	....	....
Accumulated Credit	.55	.15	1.20	1.05	.55/60
	Pd. Overtime		Pd. O. T.	Pd. O.T.	

1094

	5-30
Scheduled Hours	52.
Time Worked	59.40
Credit	7.40
Credit Bro't Forward	.55
Accumulated Credit	6.45
	Paid O.T.

(500-8/21/40-j)

Extra Labor Voucher.

Branch Savh., 5/11/1942.

Cashier Office:

Pay to J. J. Samples for 1¼ hrs. at 50¼ per hour $ .63.
Old Age Tax $ .01 Net $ .62. Otime week 5/9/42.

J. J. SAMPLES.
Received Payment.

Approved: H.

Social Security Number 256-26-2010.

Remarks: Short one man in whse. Williams out on truck.

1942.

Name J. J. Samples. Branch Savh.

	Week Ending 5-9	Week Ending 5-16	Week Ending 5-23	Week Ending 5-30	Week Ending
Scheduled Hours	60.	60.	60.	60.	....
Time Worked	61.15	53.05	53.30	55.50	....
Credit	1 1/4	1.55	6.30	4.10	....
Credit Bro't Forward	√	√	1.55	8.25	....
Accumulated Credit	1 1/4	1.55	8.25	12.35	....
	O. T. Paid.				

(500-8/21/40-j)

1096

Name F. Williams 1942. Branch Savannah.

	Week Ending 1/3	Week Ending 1/10	Week Ending 1/17	Week Ending 1/24	Week Ending 1/31
Scheduled hours for which paid	54.	54.	....	54.	54.
Time worked	38.55	61.40	....	60.10	56.25
Prepaid Hours	15.05	7.40	Used as	6.10	2.25
Prepaid Hours bro't forward	5.45	20.50	Truck	13.10	7 —
Accumulated prepaid hours	20.50	13.10	Driver	7 —	4.45
	2/7	2/14	2/21	2-28	3/7
Scheduled hours for which paid	54.	54.	54.	54.	54.
Time worked	53.40	55.40	57.55	51.15	54.25
Prepaid Hours	.20	1.40	3.55	2.45	.25
Prepaid Hours bro't forward	4.45	5.05	3.25	....	2.45
Accumulated prepaid hours	5.05	3.25	.30	2.45	2.20
			Pd. Overtime,		
	3/14	3/21	3/28	4/4	4/11
Scheduled hours for which paid	54.	54.	54.	54.	54.
Time worked	56.30	50.55	53.35	54.15	57.35
Prepaid Hours	2.30	2.05	.25	.15	3.35
Prepaid Hours bro't forward	2.20	.10	1.55	2.30	2.15
Accumulated prepaid hours	.10	1.55	2.30	2.15	1.20
				Pd. Overtime	

1097

	Week Ending 4/18	Week Ending 4/25	Week Ending 5/2	Week Ending 5/9	Week Ending 5/16
Scheduled hours for which paid	54.	54.	54.	....	....
Time worked	58.35	56.35	57.45	....	....
Prepaid Hours	4.35	2.35	3.45	....	....
Prepaid Hours bro't forward	....	....	....	Truck	Truck
Accumulated prepaid hours	4.35	2.35	3.45	Driver	Driver
	Pd Overtime	Pd. Overtime	Pd. O. T.		

	5/23	5/30			
Scheduled hours for which paid	54.	54.	....	....	....
Time worked	51.50	59.25	....	....	....
Prepaid Hours	2.10	5.25	....	....	....
Prepaid Hours bro't forward	....	2.10	....	....	....
Accumulated prepaid hours	2.10	3.15	....	....	....
		Paid O.T.			

(500-8/21/40-j)

Extra Labor Voucher.

Branch Savh., 2-23-1942.

Cashier Office:

Pay to F. Williams for ½ hrs. at 45 per hour $ .23. Old Age Tax $.... Net $ .23. Necessary to load ctry truck (Overtime).

FRED WILLIAMS.
Received Payment.

Approved: H.L.H.

Social Security Number 254-16-7023.

Remarks: .....

Extra Labor Voucher.

Branch Savh., 4/11/1942.

Cashier Office:

Pay to Fred Williams for 1-1/3 hrs. at 45 per hour $ .54. Old Age Tax $ .01. Net $ .53. Necessary a/c loading Country truck.

FRED WILLIAMS.
Received Payment.

Approved: H.

Social Security Number 254-16-7023.

Remarks: .....

Extra Labor Voucher.

Branch Savh., 4/21/1942.

Cashier Office:

Pay to F. Williams for 4-35/60 hrs. at 45 per hour $2.07. Old Age Tax $ .02. Net $2.05.

FRED WILLIAMS.
Received Payment.

Approved: H.L.H.

Social Security Number 254-16-7023.

Remarks: C. P. Shipper left in middle of week. Necessary to use Williams overtime.

Extra Labor Voucher.

Branch Savh., 4-27-1942.

Cashier Office:

Pay to F. Williams for 2-35/60 hrs. at 45 per hour $1.17. Old Age Tax $ .01. Net $1.16.

FRED WILLIAMS.
Received Payment.

Approved: H.

Social Security Number 254-16-7023.

Remarks: Overtime week 4/25/42.

Extra Labor Voucher.

Branch Savh., 5/4/1942.

Cashier Office:

Pay to Fred Williams for 3¾ hrs. at 45 per hour $1.68. Old Age Tax $ .02. Net $1.66. Overtime week 5-2-42.

FRED WILLIAMS.
Received Payment.

Approved: H.L.H.

Social Security Number 254-16-7023.

Remarks: .....

Extra Labor Voucher.

Branch Savh., 5-30-1942.

Cashier Office.

Pay to Fred Williams for 31¼ at 45 per hour $1.46. Old Age $ .02. Net $ 1.44. Overtime week ending 5-30-42.

FRED WILLIAMS.

Received Payment.

Approved: H.L.H.

Social Security Number 254-16-7023.

Remarks: Inventory Helping F P Inventory.

United States of America,
Southern District of Florida, ss.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 1,122, inclusive, contain a true copy of all such papers and proceedings pertaining to the proceedings on the Application for Adjudication in Civil Contempt in the cause of L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff, vs. Jacksonville Paper Company, a corporation; and Delia Crawford McGehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as Trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company and Clifford G. McGehee, Defendants, as appear upon the records and

files of my office that have been directed to be included in said transcript by the written order of this Court and by the agreement of the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Jacksonville, Florida, on this the 20th day of May, A. D. 1947.

EDWIN R. WILLIAMS,
U. S. District Court, Southern District of Florida,
By L. GIBSON HOUSE,
Deputy Clerk.

(Seal)

TRANSCRIPT OF RECORD ON CROSS APPEAL FROM FINAL JUDGMENT ENTERED ON CONTEMPT PROCEEDINGS.

(Title Omitted.)

Filed May 19, 1947, Jacksonville, Fla., Edwin R. Williams, Clerk.

Western Union (35).

The filing time shown in the date line on telegrams is Standard Time at point of origin. Time receipt is Standard Time at point of destination.

QA83. 1947 May 19 PM 2 42.

Q.MBA273 Govt. Pd—MB Atlanta, Ga., 19 225P.

Edwin R. Williams, Clerk United States Dist. Court, Post Office Bldg., Jacksonville, Flo.

You will please enter our notice of Cross Appeal in the case of L. Metcalfe Walling, Administrator, etc.; Plaintiff, versus Jacksonville Paper Company, et al.; Defendants, pending in the District Court of the United States for the

Southern District of Florida, Jacksonville Division, Civil Action No. 209-J, as follows: Notice is hereby given that the Plaintiff hereby appeals to the Circuit Court of Appeals of the Fifth Circuit from so much of the final judgment herein dated the 18th day of February, and entered on the 19th day of February, 1947, as (1) Refused to adjudicate the Defendants guilty of civil contempt (2) Ruled that wilful and intentional violations are essential to constitute civil contempt; and (3) Refused to require Defendants to purge themselves of contempt.

WILLIAM S. TYSON,
Solicitor,
BESSIE MARGOLIN,
Assistant Solicitor,
BEVERLY R. WORRELL,
Regional Attorney,
GEORGE A. DOWNING,
Senior Attorney,
JAMES H. SHELTON,
Senior Attorney U. S. Dept. of Labor,
Attorneys for Plaintiff.

PLAINTIFF'S DESIGNATION OF CONTENTS OF RECORD ON CROSS APPEAL.

Filed May 20, 1947.

(Title Omitted.)

To the Clerk of Said Court:

In accordance with Rule 75 (a) of the Federal Rules of Civil Procedure, you are hereby requested to include in the transcript of record to be filed in the United States

Circuit Court of Appeals for the Fifth Circuit, pursuant to the notice of cross appeal filed in the above entitled cause the proceedings designated below:

1. The notice of entry of cross appeal.

2. This designation of records.

This May 19, 1947.

(S.) WM. S. TYSON,
(William S. Tyson),
Solicitor,
(S.) BESSIE MARGOLIN,
(Bessie Margolin),
Assistant Solicitor;
(S.) BEVERLEY R. WORRELL,
(Beverley R. Worrell),
Regional Attorney,
(S.) GEO. A. DOWNING,
(George A. Downing),
Senior Attorney,
(S.) JAMES H. SHELTON,
(James H. Shelton),
Senior Attorney.

State of Georgia,
County of Fulton.

Personally appeared before me, the undersigned authority, George A. Downing, who on oath, duly administered according to law, says:

That he has served copies of the foregoing designation of records on the attorneys for the defendants by placing said copies in an envelope, properly addressed to Messrs. Ragland, Kurz & Layton, 608 Consolidated Building, Jacksonville, Florida, the envelope being a franked envelope used by the United States Government and requiring no

postage, and depositing said envelope on the 19th day of May, 1947, at 4:45 o'clock P. M., in a United States Mail Box, maintained for the purpose of receiving mail and located at the corner of Marietta and Spring Streets in the City of Atlanta, Fulton County, Georgia.

(S.) GEORGE A. DOWNING.

Sworn to and subscribed before me this 19th day of May, 1947.

(S.) C. A. VANDIVER,
Notary.

(Seal)

My Com. expires 2-1-49.

United States of America,
Southern District of Florida, ss.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 3, inclusive, contain a true copy of all such papers and proceedings in the cause of L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, vs. Jacksonville Paper Company, a corporation, et als., as appear upon the records and files of my office which have been directed to be included in said transcript of record on the cross appeal herein by the agreement of the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Jacksonville, Florida, on this the 21st day of May, A. D. 1947.

EDWIN R. WILLIAMS,
U. S. District Court, Southern
District of Florida,
By L. GIBSON HOUSE,

(Seal)

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Volume III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 110

WILLIAM R. McCOMB, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

vs

JACKSONVILLE PAPER COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 21, 1948
CERTIORARI GRANTED OCTOBER 11, 1948

STIPULATION.

Filed Sep. 26, 1947.

JACKSONVILLE PAPER COMPANY, et als.,

Appellants and Cross-Appellees,

versus

L. METCALFE WALLING, ADMINISTRATOR of the WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

Appellee and Cross-Appellant.

(And Reverse Title.)

It Is Hereby Stipulated And Agreed by and between the parties hereto by their undersigned attorneys that pursuant to Rule 18 of the rules of this Court and Rule 75(b) of the Federal Rules of Civil Procedure the record in this case may be amended so as to include the Amended and Modified Judgment entered in the District Court on June 3, 1943; and that the Clerk of the District Court may certify a copy of said Judgment to the Circuit Court of Appeals as a supplement to the record.

Dated at Jacksonville, Florida, this 26th day of September A. D., 1947.

(Signed) WM. S. TYSON,
(William S. Tyson)
Solicitor.

(Signed) BESSIE MARGOLIN,
(Bessie Margolin)
Assistant Solicitor.

(Signed) BEVERLEY R. WORRELL,
(Beverley R. Worrell)
Regional Attorney.

(Signed) GEO. A. DOWNING,
(George A. Downing)
Senior Attorney.

(Signed) JAS. H. SHELTON,
(James H. Shelton)
Senior Attorney.
Attorneys for Appellee and Cross-Appellant.

RAGLAND, KURZ & LAYTON,
(Signed) By L. KURZ,

Attorneys for Appellants and Cross-Appellees.

2 AMENDED AND MODIFIED JUDGMENT.

Filed Jun. 3, 1943.

In the District Court of the United States for the Southern District of Florida, Jacksonville Division.

Philip B. Fleming, Administrator of the Wage and Hour Division, Department of Labor, Plaintiff,

v. 209-J-Civ.

Jacksonville Paper Company, a corporation; and Delia Crawford, McGehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as Trustees for Ellen Josephine McGehee Cavert, Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Beerylin Ray McGehee, co-partners doing business as Southern Industries Company, and Clifford G. McGehee, Defendants.

This cause coming on to be heard and the parties being present by their respective counsel; and it appearing to the Court that the mandate of the Supreme Court was filed herein on March 27, 1943, and that under the decisions of the Supreme Court and of the Circuit Court of Appeals of the Fifth Circuit it is appropriate for an amended or modified decree to be entered in conformity with said opinions, upon consideration whereof it is, therefore,

I.

Ordered, Adjudged And Decreed That the defendants, Delia Crawford McGehee, Ray Sutton McGehee, and C. C. McGehee, and M. R. McGehee and Ray Sutton McGehee, as trustees for Ellen Josephine McGehee Cavert,

Kathleen Mae McGehee, Thomas Rives McGehee, Clifford G. McGehee, Jr., Frank Sutton McGehee, and Berrylin Ray McGehee, co-partners doing business as Southern Industries Company, and Clifford, G. McGehee, their officers, agents, servants, employees and attorneys, and all persons acting or claiming to act in their respective behalves and interests, be and they hereby are severally permanently enjoined and restrained from:

(1) Violating the provisions of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C., Title 29, Sec. 201, et seq.), hereinafter referred to as the Act, in any of the following particulars:

(2) During the period from the date of this judgment to October 24, 1945, paying any of their employees, engaged in commerce or in the production of goods for commerce, employed at Jacksonville, Florida, or elsewhere, wages at rates less than thirty cents (30¢) an hour or, after October 23, 1945, paying any of their said employees wages at rates less than forty cents (40¢) an hour, or the rate (not less than thirty cents (30¢) an hour) prescribed in any applicable order of the Administrator f the Wage and Hour Division, United States Department of Labor, issued pursuant to the provisions of Section 8 of the Act, whichever is lower; or, at any time paying any of their said employees (except those for whom special certificates have been issued and are in effect) wages at rates less than the rate (not in excess of forty cents (40¢) an hour) prescribed in any applicable order of the said Administrator issued pursuant to the provisions of Section 8 of the Act, including the Wage Order for the Converted Paper Products Industry, promulgated by the Administrator, which became effective June 30, 1941, Regulations, Part 598, Title 29, Chap-

ter V, Code of Federal Regulations; or, at any time paying to any of their said employees employed pursuant to a special certificate issued and in effect pursuant to the provisions of Section 14 of the Act, wages at a rate less than the rate prescribed in such special certificate, contrary to the provisions of Section 6 and 15(a)(2) of the Act;

(3) Employing any of their said employees for a workweek longer than forty (40) hours unless such employee receives compensation for his employment in excess of forty (40) hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed, contrary to the provisions of Sections 7 and 15(a)(2) of the Act;

(4) Shipping, delivering, or selling, with knowledge that shipment, delivery or sale thereof in commerce, as such term is defined in the Act, is intended, any goods produced in their place of business at Jacksonville, Florida, or elsewhere, in the production of which, or in any process or occupation necessary to the production of which, any employee was employed at wages less than the rates prescribed in paragraph (2) of this judgment, or in violation of any regulation, order or special certificate issued by the said Administrator pursuant to Section 14 of the Act;

(5) Shipping, delivering, or selling, with knowledge that shipment, delivery or sale thereof in commerce, as such term is defined in the Act, is intended, any goods produced in their place of business at Jacksonvile, Florida, or elsewhere, in the production of which, or in any process or occupation necessary to the production of which, any employee was employed in any workweek for a number of hours greater than the number prescribed in Paragraph (3) of this judgment, unless such employee

receive compensation for his employment in excess of such hours in such workweek at a rate not less than one and one-half times the regular rate at which he was employed;

(6) Failing to make, keep and preserve records of the persons employed by them and of the wages, hours and other conditions and practices of employment maintained by them as prescribed by the regulations, as amended, of the said Administrator issued pursuant to Section 11(c) of the Act, which regulations, and amendments thereto, are known as Title 29, Chapter V, Code of Federal Regulations, part 516, or by any amendments to such regulations, and particularly, but not in limitation of the provisions of this paragraph, from failing to make, keep and preserve records of the hours worked each workday and each workweek by each of their said employees and of the total wages paid ot each of their said employees for each workweek.

II.

It Is Further Ordered, Adjudged And Decreed That the defendant, Jacksonville Paper Company, a corporation, its officers, agents, servants, employees and attorneys, and all persons acting or claiming to act in its behalf and interest, be and they hereby are permanently enjoined and restrained from:

(1) Violating the provisions of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C. Title 29, Sec. 201 et seq.), hereinafter referred to as the Act, in any of the following particulars:

(2) During the period from the date of this judgment to October 24, 1945, paying any of its employees who for a substantial part of any workweek are engaged in com-

merce or in the production of goods for commerce within the meaning of said Act, employed at its main office and warehouse at Jacksonville, Florida, and at its following branches: Florida Paper Company, Jacksonville, Florida; Capital Paper Company, Tallahassee, Florida; Pensacola Paper Company, Pensacola, Florida; Partin Paper Company, Mobile, Alabama, and Atlantic Paper Company, Savannah, Georgia, wages at rates less than thirty cents (30¢) an hour; or after October 23, 1945, paying any of its said employees wages at rates less than forty cents (40¢) an hour, or the rate (not less than thirty cents (30¢) an hour) prescribed in any applicable order of the Administrator of the Wage and Hour Division, United States Department of Labor, issued pursuant to the provisions of Section 8 of the Act, whichever is lower; or at any time, paying any of its said employees (except those for whom special certificates have been issued and are in effect) wages at rates less than the rate (not in excess of forty cents (40¢) an hour) prescribed in any applicable order of the said Administrator issued pursuant to the provisions of Section 8 of the Act; or, at any time, paying to any of its said employees employed pursuant to a special certificate issued and in effect pursuant to the provisions of Section 14 of the Act, wages at a rate less than the rate prescribed in such special certificate, contrary to the provisions of Sections 6 and 15(a)(2) of the Act;

(3) Employing any of its said employees who for a substantial part of any workweek are engaged in commerce or in the production of goods for commerce within the meaning of said Act, for a workweek longer than forty (40) hours unless such employee receives compensation for his employment in excess of forty (40) hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed, con-

trary to the provisions of Sections 7 and 15(a)(2) of the Act;

(4) Transporting, offering for transportation, shipping, delivering or selling in interstate commerce, as such term is defined in the Act, any goods produced by the co-partner defendants, trading as Southern Industries Company, in their said place of business at Jacksonville, Florida, or elsewhere, in the production of which, or in any process or occupation necessary to the production of which, any employee of the said co-partner defendants was employed at wages less than the rates prescribed in paragraph I (2) of this judgment, or in violation of any regulation, order or special certificate issued by the said Administrator pursuant to Section 14 of the Act;

(5) Transporting offering for transportation, shipping, delivering or selling in interstate commerce, as such term is defined in the Act, any goods produced by the co-partner defendants, trading as Southern Industries Company, in their said place of business at Jacksonville, Florida, or elsewhere, in the production of which, or in any process or occupation necessary to the production of which, any employee of the said co-partner defendants was employed in any workweek for a number of hours greater than the number prescribed in paragraph I (3) of this judgment, unless such employee receive compensation for his employment in excess of such hours in such workweek at a rate not less than one and one-half times the regular rate at which he was employed;

(6) Failing to make, keep and preserve records of the persons employed by it and of the wages, hours and other conditions and practices of employment maintained by it as prescribed by the regulations, as amended, of the said Administrator issued pursuant to Section II (c)

of the Act, which regulations, and amendments thereto, are known as Title 29, Chapter V, Code of Federal Regulations, Part 516, or by any amendments to such regulations, and particularly, but not in limitation of the provisions of this paragraph, from failing to make, keep and preserve records of the hours worked each workday and each workweek by each of its said employees and of the total wages paid to each of its said employees for each workweek.

III.

It Is Further Ordered, Adjudged And Decreed That the defendant, Jacksonville Paper Company, a corporation, its agents, servants, employees, attorneys, and all other persons acting or claiming to act in its behalf and interest, be and they are hereby permanently enjoined and restrained from violating Sections 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act as more particularly hereinafter stated, as to any of its employees in its branches at Tampa, Florida; St. Petersburg, Florida; Lakeland, Florida; Orlando, Florida; Miami, Florida; West Palm Beach, Florida; and Macon, Georgia, a substantial part of whose duties or activities during any workweek relate to:

1. The ordering, purchasing, receiving and unloading of goods from extrastate sources, including also the writing of letters, the keeping of books pertaining to such goods and the making of payments therefor, and the hauling of said goods from wharves and from depots.

2. (a) The ordering, purchasing, receiving, unloading and warehousing, storing and delivering of the following categories of goods received from extra-state points:

(1) Those shipped on the defendants' order direct from an extra-state manufacturer to the defendant's customers.

(2) Those ordered specially to fill a customer's order for stock items whose supply is exhausted or for items which are stocked only at the manufacturer's mill.

(3) Those ordered by the defendant to meet the neesd of specified customers, including orders for special items which are not carried in stock and including those which are to be printed or otherwise marked or designated by the manufacturer with the customer's name.

(4) Those ordered for the purpose of filling a pre-existing contract or understanding with the customer.

The violations of said Act hereby particularly enjoined are as follows:

1. The defendant shall not, contrary to Section 6 of the Act, pay any of its said employee from the date of this judgment to October 24, 1945, wages at rates less than thirty (30) cents an hour; nor thereafter, wages at rates less than forty (40) cents an hour, except to the extent that a lower wage rate is authorized by an applicable order of the Administrator issued under Section 8(e) of the Act. The defendant shall not at any time pay to its above described employees wages at rates less than those prescribed in any applicable order of the Administrator issued pursuant to the provisions of Section 8 of the Act. The provisions of this paragraph shall not prevent defendant from paying to any of its employees wages authorized as to such employees by a special certificate issued and in effect under Section 14 of the Act.

(2) The defendant shall not, contrary to Section 7 of the Act, employ any of its said employees for a work-week longer than forty (40) hours, unless the employee receives compensation for his employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he is employed.

Provided, however, that defendant's truck drivers who are within the exemption provided in Section 13 (b) (1) shall not be entitled to the payment of overtime compensation as aforesaid.

(3) The defendant shall not fail to make, keep and preserve records of its employees, and of the wages, hours, and other conditions and practices of employment maintained by it, as prescribed by the regulations of the Administrator issued, and from time to time amended, pursuant to Section 11(c) of the Act, and found in Title 29, Chapter V, Code of Federal Regulations, Part 516.

It Is Further Ordered, Adjudged And Decreed that the costs of this action be taxed against the defendant.

Done And Ordered at Jacksonville, Florida, this 3rd day of June, 1943.

(Sgd.) LOUIE W. STRUM,
United States District Judge.

Certified Copy.

D. C. Form No. 30.

United States of America,
Southern District of Florida, ss.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, do hereby certify that the annexed and foregoing is a true and full copy of the original Stipulation, filed September 26, 1947, and Amended And Modified Judgment, filed June 3, 1943, in case No. 209-J-Civil, Philip B. Fleming, Administrator of the Wage and Hour Division, Department of Labor, vs. Jacksonville Paper Company, a corporation, et al., now remaining among the records of the said Court in my office, which we have been directed to forward to the Circuit Court of Appeals as a supplement to the record on appeal in the above entitled cause.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Jacksonville, Florida, this 29th day of September, A. D. 1947.

(Seal)

EDWIN R. WILLIAMS,
Clerk.
By L. GIBSON HOUSE,
Deputy Clerk.

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of March 8th, 1948.

No. 11999

JACKSONVILLE PAPER COMPANY, ET AL.,

versus

WILLIAM R. McCOMB, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

(AND REVERSE TITLE)

On this day this cause was called, and after argument by Miss Bessie Margolin, Assistant Solicitor, United States Department of Labor, for appellee and cross-appellant, and Louis Kurz, Esq., for appellants and cross-appellees, was submitted to the Court.

OPINION OF THE COURT—Filed March 23, 1948

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 11999

JACKSONVILLE PAPER COMPANY, ET AL., APPELLANTS AND CROSS-APPELLEES

versus

WILLIAM R. McCOMB, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, APPELLEE AND CROSS-APPELLANT

(AND REVERSE TITLE)

Appeal and Cross-Appeal from the District Court of the United States for the Southern District of Florida

(March 23, 1948)

Before SIBLEY and LEE, Circuit Judges, and COX, District Judge

SIBLEY, Circuit Judge: The appellants are individuals who conduct a manufacturing business and Jacksonville Paper Company, a corporation owned by the individuals, which buys their products

and other goods and sells them through a main office and warehouse at Jacksonville, Florida, and through thirteen branch offices and warehouses at other points in Florida, Georgia and Alabama. They at first considered that their several businesses were intrastate and that none of their hundreds of employees were under the Fair Labor Standards Act, 29 U. S. C. A. Sect. 201, and following, and did not attempt to conform to it. The Administrator, thinking otherwise, sued for and obtained an injunctive decree on Aug. 29, 1941, which in general terms required observance of the Act by the individuals, and by the Jacksonville Paper Company as to its employees at Jacksonville and at six of the branches but not as to the seven other branches where it was thought no interstate commerce was done. On appeal to this court the injunction as granted was held to be too broad in its terms, and erroneous in excluding the seven exempted branch offices because some of the employees, who were not named or identified, were apparently engaged in interstate commerce. *Fleming, Admr., vs. Jacksonville Paper Co.*, 128 Fed. (2) 395. On certiorari the Supreme Court amplified the transactions which would be a part of such commerce, and affirmed our remand of the cause to the District Court for further findings and decree. *Walling vs. Jacksonville Paper Co.*, 317 U. S. 564. No further evidence was taken nor findings made in the District Court, but on June 3, 1943, there was formulated an amended and modified decree which eliminated the general injunction against violating the Act in any way; and in three subdivisions it enjoined the violation after the date of this decree of Sections 6, 7, 11(c) and 15(a)(2), of the Act as to any employee; and as to certain kinds of shipments, but failed to find or forbid specifically any practice now in controversy. The Administrator on April 16, 1946, filed the present petition which, while not asserting any general failure to comply with the Act, asserted that as to several specific practices and as to thirteen named employees the above mentioned Sections of the Act, and therefore the injunctions, were being violated, and stated the grounds on which the defendants claimed that what they were doing was not in violation of the Act; and it prayed that the defendants be adjudged in contempt and be required to pay the unpaid wages due the affected employees as a vindication of the Administrator's right and a purge of the contempt.

After a full hearing the District Judge rendered an opinion in which he held that the practices attacked were not according to the Act, but the violations were not wilful, and none of them had been specifically considered and condemned by previous findings or decrees of the court, and that there was therefore no contempt of the injunctions in them; but that the practices ought to be stopped and to that end he would treat the proceeding as one to enlarge the injunction and prohibit the practices for the future. He decreed accordingly, enjoining one by one the practices he had found not

in accord with the Act. The defendants have appealed, asserting error in condemning six of their practices. The Administrator has appealed, specifying as errors the refusal to adjudicate defendants in civil contempt and the refusal to require full compliance with the injunctions from their date.

We consider first the six assignments of appellants. Those relating to particular employees involve their exemption under Sect. 13(a), 29 U. S. C. A. Sect. 213(a), as administrative and executive employees, or the question whether their work, mostly intrastate commerce, commingled to a substantial extent also interstate commerce. Their classification depends on questions of fact, and the conclusions of the District Court are not clearly erroneous. Two employees, in charge of what are contended to be separate departments, make a close case, but we do not think there is clear error as to them.

The corporation had a bonus plan used since May, 1942, whereby the directors at the end of the year had declared a bonus to some classes of employees based on a percentage of their total pay the preceding year, for which each was issued a note; but not payable at once and unconditionally, but in twelve instalments, one at the end of each month of the succeeding year if the employee were still working for the corporation. The bonus each year was not promised in advance but was voluntarily declared and apparently was no part of the regular wages legally due that year; and if immediately paid would have had no relation to the wages due the next year. But when it was declared payable as above, it seems to us that by continuing to work the employee could enforce payment each month, and that he was working for it as well as for his other wages, so that it became part of his regular compensation for each work week, and would have to be considered as such in computing any overtime. Failure so to regard it was in violation of the Act.

The individual defendants had a practice of requiring the punching of a time clock and of not recording or compensating as time worked any hours not so shown by the clock, though the employee might claim he had worked but failed to punch the clock. During a year eleven such failures to punch are testified to have occurred among 110 to 140 employees. It does seem that an employer ought to have some protection along this line, and might be excused at least for inexact records so caused; but the Act requires that wages be paid for time actually worked, though the time is not proved in this particular way, and the courts cannot authorize the employer to make the clock the sole evidence of hours worked.

Turning to the Administrator's cross-appeal, the District Court having found that the practices attacked by the contempt petition were in fact unlawful, and that some of them were going on when the injunction decrees were made, nevertheless held that none had been actually considered before or specifically condemned and for-

bidden by the court, and that all had been continued without any wilful purpose to evade the injunctions, and it refused to hold the defendants in contempt. We find that the original petition filed in 1940 was in broad terms and did not mention these practices, though in the hearing on it evidence was introduced about some of them. The judge then presiding, esteeming that the main question was whether the employees at the various places of business were in commerce at all, and the admissions of the defendants having shown they were, except at certain branch offices, he announced that he would enjoin as to all save these doubtful branches, and he cut the evidence short and confined the trial to whether interstate commerce was done at those branches. He made no findings of fact about any of the practices now in question, and in his conclusions of law he stated that it would be unfair to make any specific findings since he had cut the evidence off. His decree was for a general injunction in the terms of the Act as to all save the excepted branches, and as to the employees at these branches an injunction was altogether refused. On appeal to this court nothing was discussed or ruled about the matters now in controversy, and the reversal was only because of the generality of the injunction which was granted, and because an injunction ought not to have been refused as to all the employees in the excepted branches, since some were there also engaged in interstate commerce. The Supreme Court held the same. Thereafter in the District Court no additional testimony was heard and no additional findings made, but the decree was reframed, but still for the most part in general terms, and with no specific reference to any practice now in controversy. The decree was in general complied with, and complaint is now made only as to a few employees affected by these particular practices. Since the court had never by finding or decree condemned them, their continuance might well be found not to have been wilful contempt or evasion. The Administrator waited three years to complain of them. The practice of Jacksonville Paper Company referred to as the "accumulated hours plan" for estimating overtime, the Administrator now attacks most vigorously, and the judge condemned it as illegal, and no error is assigned to this ruling. It began in 1940, and the judge finds that it was "believed by defendant to fully comply with the decision of the Supreme Court in *Walling vs. A. H. Belo Corporation*, 316 U. S. 624"; and an amendment of it later "was an effort to take advantage of the prepayment plan theretofore promulgated by the Administrator of the Wage and Hour Division." This justifies his conclusion that there was no wilful evasion of the law or the injunctions, since they did not specifically refer to or condemn it. Under all the circumstances we think the court's conclusion is justified that there was no wilful contempt as to any of the practices which it was for the first time condemning, and that a more specific injunction was the proper way to protect the future.

There being no contempt found, we have no need to enquire whether if there had been the court could award reparation for unpaid wages as a purging of the contempt. The remedy for not paying wages in full which is given by the Act, 29 U. S. C. A. Sect. 216(b), is a suit by the employees, singly or in a body, or by an agent, in which double damages and attorneys fees are recoverable. The Administrator by Sect. 211(a) may bring suit "to restrain violations" under the jurisdiction given the court in those words by Sect. 217. A conflict of views has arisen as to whether the court can or should undertake to order retroactive reparation as an incident of a decree of restraint. Possibly such reparation would conflict with or destroy the employees' right to recover double damages. We express no opinion on the subject; but since the District Court of its own motion has extended the injunction to these specific practices, and since the Administrator is earnestly insisting on such reparation, and since a full affirmance of the judgment now before us would prevent any further modification without our leave, we now grant leave to the Administrator, if so advised, to apply to the District Court for modification on this line; but we give no instruction as to what the court can or should do.

Subject to this leave, the judgment appealed from is in all respects

Affirmed.

JUDGMENT

Extract from the Minutes of March 23rd, 1948

No. 11999

JACKSONVILLE PAPER COMPANY, ET AL.,

versus

WILLIAM R. MCCOMB, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR,

(AND REVERSE TITLE)

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed in all respects, subject to leave granted the Administrator, if so advised, to apply to the said District Court for modification in accordance with the opinion of this Court.

Clerk's Certificate

United States of America,

United States Circuit Court of Appeals, Fifth Circuit

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 1121 to 1130 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 11999, wherein Jacksonville Paper Company, et al., are appellant and cross-appellees, and William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, is appellee and cross-appellant (and reverse title), as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, Volumes I. and II., and supplemental record numbered from 1 to 1120 are identical with the printed record and supplemental record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the transcript of record in this Court on the former appeal, entitled Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, appellant and cross-appellee, versus Jacksonville Paper Company, et al., appellees and cross-appellants, was used by this Court in the hearing and decision in said cause.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of May, A. D. 1948.

Oakley F. Dodd,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

[seal]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1948 789838

Supreme Court of the United States

Order allowing certiorari

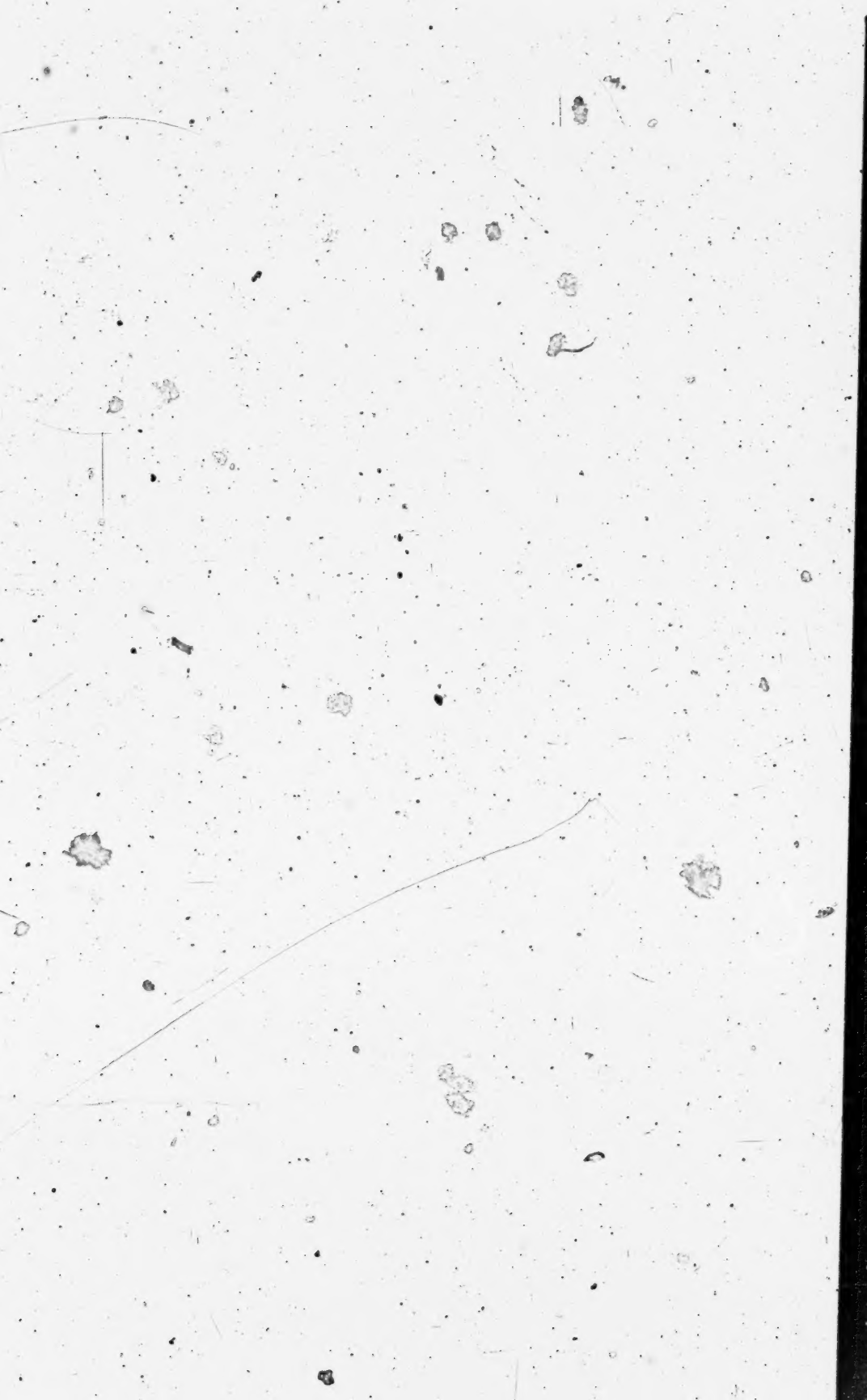
Filed October 11, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. —

WILLIAM R. MCCOMB, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

JACKSONVILLE PAPER COMPANY, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit, entered in the above case on March 23, 1948.

OPINIONS BELOW

The opinion of the district court (2nd R. 992-1011)[1] is reported at 69 F. Supp. 599. The opinion of the circuit court of appeals (2nd R. 1121) is reported at 167 F. 2d 448.

[1] The record in the original injunction proceeding (No. 336, October Term, 1942) will be cited as "1st R"; the proceedings in the district court immediately following this Court's remand of the case will be cited as "Supp. R"; the record in the present contempt proceeding will be cited as "2nd R."

JURISDICTION

The judgment of the circuit court of appeals was entered on March 23, 1948 (2nd R. 1125). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether in a civil contempt action proof of wilful or intentional defiance of the decree is required where compliance is the sole remedy sought, and no penalty or punishment is involved.

2. Whether a judgment enjoining underpayments in violation of the minimum wage and overtime provisions of the Fair Labor Standards Act is unenforceable in a civil contempt action because the trial court did not specifically condemn or refer to the particular unlawful practices resulting in the underpayments proved in the contempt proceeding.

3. Whether in a civil contempt action, upon proof of underpayments in violation of a decree, the Administrator is entitled to an order compelling compliance with the decree by the payment of the wages required thereby.

STATUTE INVOLVED

The pertinent provisions of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C., sec. 201) are as follows:

> SEC. 7 (a). No employer shall, except as otherwise provided in this section, employ

any of his employees who is engaged in commerce or in the production of goods for commerce—

* * * * * *

"(3) For a workweek longer than forty hours * * *, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

SEC. 15 (a). After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

* * * * *

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14;

SEC. 17. The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., 1934 edition, title 28, sec. 381), to restrain violations of section 15.

STATEMENT

This proceeding in civil contempt arises out of the same case which was before this Court over

five years ago *sub nom. Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564. The question before this Court at that time was whether the Fair Labor Standards Act applied to respondents' employees in certain of respondents' branch warehouses. Employees in other warehouses were concededly covered, and an injunction had been issued against respondents as to them. This Court's decision slightly enlarged the class of employees covered. The question here is whether respondents, who have continued to violate the law, should be forced in a civil contempt proceeding to comply with the original injunction by paying their employees the amounts which have unlawfully been withheld from them since the original injunction was entered.

A. *Proceedings Prior to Issuance of Injunction*

This action was originally instituted in July 1940 to enjoin respondents from violating the minimum wage, overtime, record-keeping, and "hot goods" provisions of the Fair Labor Standards Act (1st R. 2–21).

At a pre-trial conference, respondents admitted that they were engaged in interstate commerce at the principal office and warehouse in Jacksonville, Florida, and at five of the twelve branches (1st R. 37). They claimed that the other seven branches were engaged exclusively in intrastate commerce (1st R. 38). As to these seven branches respondents admitted that there was no compli-

ance with the Act inasmuch as they did not believe the Act covered the activities there carried on (1st R. 43, 38). At the beginning of the trial, counsel for respondents also admitted that there had been violations, without specifying particulars, at the other admittedly covered offices and branches of their business, but claimed that such violations ceased by April 27, 1940, or a few weeks before suit was filed (1st R. 44–47).

At the trial, the Administrator introduced evidence to establish that respondents were violating the minimum wage and overtime provisions of the Act in various ways at the admittedly covered plants as well as at the so-called "intrastate" branches. The proof that had been presented with respect to violations up to the time of the trial court's determination that the issuance of an injunction was warranted (see pp. 7–8, *infra*) showed the following:

(1) *Piece-workers.* Respondents had failed to comply with either the minimum wage or the overtime provisions of the Act as to piece-workers, respondents' managing partner taking the position that piece-workers were not covered. This treatment of piece-workers continued despite the contrary advice of the Wage and Hour inspector, and apparently despite the advice to respondents from their own attorney that piece rate workers were within the scope of the Act (1st R. 185–187, 576, 577).

(2) *Concealment of overtime hours* by crediting such time to other workers who had not worked the maximum workweek. Under this system, the employees who worked the overtime collected at the straight-time rates from the other employees for the hours credited to the employees who had not worked them (1st R. 182–184, 196).

(3) *Keeping a separate account* and paying employees separately, on so-called "extra labor vouchers," for hours worked in excess of the maximum workweek and not showing such overtime hours on the regular time book (1st R. 189–192, 200–206, 211–212).

(4) *Misclassifying* certain salaried employees as exempt "executive" and "administrative" employees (1st R. 82–103, 120–128, 194). The evidence of the Wage and Hour inspector shows that officials of the Southern Industries plant were advised that they appeared to be misclassifying certain salaried employees who did not meet the requirements of the regulations issued by the Administrator pursuant to the Act. The inspector offered to furnish defendant C. G. McGehee a copy of the regulation and to explain it, but Mr. McGehee turned down the offer with the statement that he was sufficiently familiar with the regulation (1st R. 194).

(5) *The accumulated hours plan.*—Shortly before the institution of this suit in 1940, respondents discharged many of their employees who had been paid flat weekly salaries without additional

compensation for overtime, and then immediately rehired them under a plan by which they received the same compensation as before, purportedly arranged so as to cover both straight time and overtime. (1st R. 315–335, 543–558; 2nd R. 111–139). Although respondents thought the plan lawful under *Walling* v. *Belo Corp.*, 316 U. S. 624 (2nd R. 1000), the court in the contempt proceeding[2] found it illegal because it set up "a completely false and fictitious method of computing compensation without regard to the hours actually worked" (2nd R. 1001), a finding from which respondents have not appealed.

(6) *Section 11 (c) violations* (record-keeping violations).—In addition to respondents' failure to keep any records of the hours of the piece-rate workers (1st R. 182, 197–198), false records were kept with respect to employees whose overtime hours were credited to other employees and employees who were paid by "extra labor vouchers" pursuant to the practices described *supra*.

After hearing the Government's evidence on these matters for almost three days (1st R. 39–335), the trial court stated that in view of the admissions as to violations and the evidence, re-

[2] The plan is described in more detail in the findings of the District Court (2nd R. 999–1001). Extensive testimony as to this practice was presented by both parties at the original trial, both before and after the court shut off evidence as to violations generally (1st R. 315–335, 543–558); the record in the contempt proceeding incorporated a portion of the original record with respect to the plan (2nd R. 111–139).

spondents had not heretofore complied with the statute; the court thereupon directed that further evidence relate to the question whether some of respondents' branches were covered by the Act (1st R. 335–336).[3] At the close of the trial the court held that the employees at the seven disputed branches were not subject to the Act, but concluded from respondents' admissions of violations at the branches concededly in interstate commerce that the statute had been violated and that an injunction should issue as to those branches (1st R. 707–708). The court made no findings as to particular practices at those branches, inasmuch as it had shut off the evidence as to such matters (1st R. 711). An injunction was entered limited to the other establishments, generally restraining violations of *any* of the provisions of the Act and particularly Sections 6 (minimum wage), 7 (overtime), 15 (a) (1) (shipment of "hot goods"), and 11 (c) (record-keeping) (1st R. 712–718).

Both parties appealed to the circuit court of appeals. That court held that some of respondents' employees at the disputed warehouses were engaged in interstate commerce, and that the Administrator was therefore entitled to relief as to them (1st R. 743–745). In addition, the appellate court eliminated from the injunction the

[3] Additional evidence with respect to violation was, however, heard. (1st R. 543–558).

general prohibition against "violating *any* of the provisions" of the Act (1st R. 745). The cause was therefore ordered remanded for the framing of a new decree. On writ of certiorari, this Court held that the activities of some additional employees at the disputed warehouses were in commerce, and affirmed the judgment of the Circuit Court of Appeals as thus modified, stating that "Whether additional evidence must be taken on any phase of the case so that a decree may be drawn is a question for the District Court." 317 U. S. 564, at 572.

Pursuant to the mandate of this Court and the judgment of the circuit court of appeals, the district court without further hearing (2nd R. 994) entered an amended and modified judgment, June 3, 1943 (Supp. R. 3–11). The amended judgment omitted the general injunction against violating *any* of the provisions of the Act. The judgment specifically enjoined respondents, *inter alia*, from paying employees covered by the Act* "less than thirty (30¢) cents an hour, or, after October 23, 1945 * * * less than forty cents (40¢) an hour", except as permitted by orders of the Administrator issued under Section 8 or 14 of the Act, and from employing such employees "for a workweek longer than forty (40) hours unless such employee receives compensation for his em-

*The judgment contained specific provisions as to which employees were covered by the Act (Supp. R. 3–11).

ployment in excess of forty (40) hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed". (Supp. R. 4–5, 7, 10–11). No appeal was taken from this judgment.

B. *Proceedings in the Contempt Action*

This civil contempt proceeding was instituted by the Administrator in April 1946. The application for an adjudication in civil contempt alleged that respondents had not been complying with the minimum wage, overtime, and record-keeping provisions of the judgment in many respects (2nd R. 1–15). The application prayed that respondents be required to terminate their continuing violations and to "make payment of the amounts of unpaid wages due their affected employees" (2nd R. 14). After trial, the district court found widespread violations of the Act by respondents (1) by misclassifying some twenty employees as exempt "executive" or "administrative" employees, (2) by employing certain piece workers in excess of the maximum workweek without paying them overtime compensation, (3) by excluding from the regular rate of pay of virtually all employees a wage increase granted in the guise of a so-called "bonus," and (4) by applying to numerous employees a "completely false and fictitious method of computing compensation" in the form of an "accumulated hours plan" (2nd

R. 998–1008).[5] Except for the third, these violations were of the same nature, and in some instances concerned the same employees, as were the subject of the trial in the original injunction proceeding (1st R. 82–95, 120–128; 2nd R. 241–259, 267–286).

The District Court nevertheless held that because the prior judgment did not specifically adjudicate the invalidity of the above practices, the court lacked "discretionary power" to punish the defendants for contempt, inasmuch as "to constitute civil contempt there must be some evidence of a wilfull and intentional violation of a Court Order" (2d R. 1010). The finding of absence of wilfullness was seemingly predicated on the conclusion that none of the "specific provisions of the former Judgments prohibiting the doing of any specific thing" had been violated (2d R. 1010–1011).[6] The court furthermore held that it had no power under the statute to allow the administrator to enforce the payment of the unpaid statutory wages in order to enforce compliance with the former judgments, relying on the prior deci-

[5] The Circuit Court of Appeals stated in its opinion that the decree was "in general complied with". (2nd R. 1124.) In view of the proof and findings of widespread violations of the sections of the Act referred to in the decree, the import of this statement is not clear. There was no such finding by the trial court nor does the record support such a finding.

[6] With respect to the accumulated hours plan the court found (2nd R. 1000) that respondents thought their action lawful under *Walling* v. *Belo Corp.*, 316 U. S. 624. The court made no similar finding as to respondents' beliefs with respect to any of the other practices in issue.

sion of the Fifth Circuit in *Walling* v. *Crane*, 158 F. 2d 80.

The court thereupon treated the application for an adjudication in contempt as an amended complaint seeking a broadening of the previous injunction, and entered judgment issuing such an injunction (2d R. 1011–1016).

Both parties appealed.[7] The circuit court of appeals affirmed both the ruling that respondents had violated the Act and the refusal to adjudicate respondents in civil contempt (2d R. 1121–1125).[8]

REASONS FOR GRANTING THE WRIT

The lower courts have not denied that respondents were violating the injunction issued after the decision of this Court in 1943. They held, however, that respondents' conduct could nevertheless not be found in contempt because the violations were not "willful"; by this seemingly was meant that since the unlawful practices committed were not referred to specifically in the judgment and

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[7] Respondents did not challenge the findings that its "accumulated hours plan" was invalid nor that three of its employees had been misclassified as "executives," but did appeal from the other findings of violation.

[8] The court ruled that there was "no need to enquire whether if there had been [contempt] the court could award reparation for unpaid wages as a purging of the contempt," but it granted leave to the Administrator to apply to the district court to seek "retroactive reparation" as an "incident" of the broadened injunction (2nd R. 1125). But cf. the same court's decision in *Walling* v. *Crane*, 158 F. 2d 80, discussed *infra*, p. 23.

had not been explicitly held unlawful by the enjoining court, respondents (though doubtless intending what they were doing) were not aware that such conduct was covered by the injunction.

1. For present purposes, we shall assume the correctness of the lower courts' finding that respondents' unlawful conduct was not a "willful" violation of the injunction. Since respondents knew that they were engaging in precisely the same practices charged by the Administrator to be unlawful at the first trial and that the injunction was in the language of the statute, it is clear, however, that respondents calculatingly risked crossing the line of illegality, whether they meant to violate the injunction or not.

The holding that proof of willful or intentional defiance of a decree is required in a civil contempt action in order to secure simply the remedy of compliance—without any punishment—conflicts with the general rule consistently recognized in the circuit courts of appeals and the district courts and by leading secondary authorities. *Telling* v. *Bellows-Claude Neon Co.*, 77 F. 2d 584, 586 (C. C. A. 6), certiorari denied, 296 U. S. 594; *Proudfit Loose Leaf Co.* v. *Kalamazoo Loose Leaf B. Co.*, 230 Fed. 120, 132 (C. C. A. 6); *Lustgarten* v. *Felt & Tarrant Mfg. Co.*, 92 F. 2d 277, 280 (C. C. A. 3); *Labor Board* v. *Whittier Mills Co.*, 123 F. 2d 725, 727 (C. C. A. 5); *Metallizing Engineering Co.* v. *B. Simon*, 64 F. Supp. 848 (W. D. N. Y.); *Bowers* v. *Pacific Coast Dredging &*

Reclamation Co., 99 Fed. 745, 755 (C. C. N. D. Calif.); *Atlantic Giant Powder Co.* v. *Dittmar Powder Manufacturing Co.*, 9 Fed. 316 (C. C. S. D. N. Y.); *Freeman* v. *Premier Mach. Co.*, 25 F. Supp. 927, 928 (D. Mass.); *Calculagraph Co.* v. *Wilson*, 136 Fed. 196, at 199 (C. C. D. Mass.); *Matthews* v. *Spangenberg*, 15 Fed. 813, 814 (C. C. S. D. N. Y.); 2 High, *Injunctions* (4th ed., 1905) §§ 1416–20; 1 Beach, *Injunctions*, (1895), § 250; Swayzee, *Contempt of Court in Labor Injunction Cases* (1935) pp. 20–21; Moskovitz, *Contempt of Injunctions, Civil and Criminal*, 43 Columbia Law Review 780, 793–5 (1943), and cases cited.

These authorities uniformly recognize that willfulness is a characteristic *distinguishing* criminal from civil contempt, and that while it "may affect the extent of the penalty" to be imposed for civil contempt, the absence of willfulness does "not relieve from liability for a civil contempt" (see *Proudfit* case, *supra*, at 132, 134). "In civil contempt the general rule is that the defendant need not have acted wilfully, and this would seem correct, inasmuch as civil liability for damage done ought not to depend on whether or not the defendant has a 'guilty mind.'" Moskovitz, *supra* at 794–795. As the Fifth Circuit itself has said, in a proceeding "in civil contempt to obtain the benefits of a decree and not one in criminal contempt to hold the respondents guilty of a crime, * * * the question for decision is not one of the intent with which, but simply whether, certain

acts were done." *Whittier Mills Co.* case, *supra* at 727. And in *United States* v. *United Mine Workers*, 330 U. S. 258, this Court recently indicated that willfulness was not an element of civil contempt, saying "The charge in the petition of 'wilfully * * * and deliberately' disobeying the restraining order indicates an intention to prosecute criminal contempt." (330 U. S., at 297n.)

Where, as in the instant proceeding, no penalty or punishment of any kind is sought but only the strictly civil relief of compliance with a duty imposed by the decree and by the law, "the belief, motive, or intent of the defendant not to violate the injunction does not excuse him if in fact his acts resulted in a violation of it." See *Rodgers* v. *Pitt*, 89 Fed. 424, at 429 (C. C. D. Nev.).

The blanket refusal by the courts below to enforce the terms of the decree in the instant case is particularly without justification, since it excused not only practices of possibly doubtful illegality but also practices unquestionably illegal, and which (except as to the bonus plan) respondents knew were claimed to be illegal by the Government when the injunction was issued. There could not have been any reasonable doubt, for example, about the applicability of the Act to piece workers after this Court's decision in January 1945 in *United States* v. *Rosenwasser*, 323 U. S. 360. Yet the record in the contempt proceeding shows that respondents were still under-

paying piece workers and asserting that they were not within the scope of the Act a year and a half after that decision (2nd R. 1007–1008; 244–246, 252, 254–256). Likewise, the findings of the court below (2nd R. 1005–6) show that there was no reasonable ground for respondents to have misclassified their employees as "executives." The evidence that these employees did not meet the prescribed standards to qualify for the exemption was found by the court below to be "so conclusive" as to make it "unnecessary for the Court to summarize the reason for the disqualification of each particular employee" (2nd R. 1006). Similarly, the characterization by the court below of the "accumulated hours plan" as a "completely false and fictitious method of computing compensation without regard to the hours actually worked" (2nd R. 1001), would seem to foreclose the conclusion that there was reasonable doubt as to the illegality of that scheme, particularly after subsequent decisions of this Court.[9] Thus, with the possible exception of the bonus plan, it cannot fairly be said of any of the illegal practices proved in the contempt proceedings that there was reasonable uncertainty of their illegality.

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[9] The decisions in the *Helmerich & Payne*, *Harnischfeger* and *Youngerman-Reynolds* cases, decided November 6, 1944, and June 4, 1945, respectively, made it plain that any false or fictitious or artificial method of computation was invalid. *Walling* v. *Helmerich & Payne*, 323 U. S. 37; *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427; *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419.

In any event, whatever reason there might be for reluctance to punish or penalize respondents for unintended violations resulting from an erroneous interpretation of the decree, there is no equitable basis for permitting respondents to breach the injunction without even the risk of having to relinquish to the wronged employees the fruits of their violations. As suggested some years ago by the Seventh Circuit Court of Appeals in a patent infringement case, a defendant who has been enjoined has no "equity" to hew close to the line of disobedience and avoid a citation for contempt when he oversteps the line. *Charles E. Hires Co.* v. *Consumers' Co.*, 100 Fed. 809, 813 (C. C. A. 7); see also *Williams* v. *Mitchell*, 106 Fed. 168, 172 (C. C. A. 7). It has long been recognized that "any person who has been enjoined, who undertakes to see how far he can go or what he may do without crossing the prohibited line, places himself in a dangerous condition, and is always liable to be deemed guilty of contempt; for his own judgment may be so warped by his feelings or necessities that he is liable, even unintentionally, to overstep the legal bounds" (*Rodgers* v. *Pitt*, 89 Fed. 424, at 429 (C. C. D. Nev.)). "It is not proper for a defendant who has been enjoined to experiment with a view of determining how near he may come to a violation of the injunction without actually violating it." 2 High, *Injunctions*, § 1427. There is clearly no justification for relieving such defendant of the

risk of purely civil relief which requires no more than ~~that he bring~~ himself into compliance with the terms of the decree. The consequence of the decision below is to permit the noncomplying employer to retain the advantages accruing from his resolving doubts against compliance, at the expense not only of the public interest in effective enforcement and of employees' rights, but also of complying competitors.

2. In refusing to enforce the decree according to its terms, the decision below conflicts with this Court's decisions reaffirming "the long-standing rule that a contempt proceeding does not open to reconsideration the legal or factual basis of an order alleged to have been disobeyed * * *." *Maggio* v. *Zeitz*, 333 U. S. 56, 68–69; *Swift & Co.* v. *United States*, 276 U. S. 311, 327–328; see also *United States* v. *United Mine Workers*, 330 U. S. 258, 293. This aspect of the decision is also contrary to another decision of the Fifth Circuit in the case of *Labor Board* v. *American Mfg. Co.*, 132 F. 2d 740. In holding respondent there in contempt of a decree phrased in much broader and more general terms than the decree here involved, the court said that the contention "that the scope of the decree * * * long since become final, may now be limited *short of its terms*, is wholly without merit, for a decree entered with jurisdiction must be obeyed as entered. * * * Its terms are clear and comprehensive and if they read more broadly than respondent intended that

they should, the time and manner of avoiding that breadth was by objections to the decree before its entry and not by disobedience of it afterwards" (p. 742, italics supplied).

While respondents appealed from the original decree entered in this case, they did not appeal from the decree as modified.[10] Although the trial court at the injunction trial did not rule on the legality of the particular practices here involved, the decree was drafted in terms to enjoin such practices should they prove to be illegal. Respondents were fully aware of the scope of this decree and of the fact that some of the particular practices were claimed to be illegal. They nevertheless did not appeal nor seek to have the decree modified or clarified, but chose to follow their own "private determination of the law." Cf. *United States* v. *United Mine Workers,* 330 U. S., at 293. The decision below excusing respondents' violations under such circumstances tends to "foster experimentation with disobedience" of injunctions (*Maggio* v. *Zeitz,* 333 U. S. at 69) and thus to hamper seriously the effective enforcement not only of the Fair Labor Standards Act but of many other Federal statutes which provide similar enforcement procedures.[11]

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[10] Moreover, even their appeal from the original decree did not challenge its scope, but claimed that no injunction at all should issue because of the claimed cessation of violations (1st R. 737; see also respondents' brief on that appeal, pp. 29–43).

[11] See *Maggio* v. *Zeitz*, 333 U. S. at 68, n. 3.

3. The refusal to enforce the injunction with respect to methods of under-payment not specifically referred to or condemned by the district court has the effect of permitting a defendant to avoid compliance by altering the details of his unlawful scheme or undertaking practices as to which the district court has made no findings. This would mean that the type of injunction which this Court has sustained as properly not restricted to the precise acts found to have been unlawful (*May Department Stores Co.* v. *Labor Board*, 326 U. S. 376, 389–391; *Local 167* v. *United States*, 291 U. S. 293, 299; cf. *Labor Board* v. *Express Publishing Co.*, 312 U. S. 426; *Federal Trade Commission* v. *Morton Salt Co.*, 1947 Term, No. 464, decided May 3, 1948 (slip opinion p. 13); *Standard Oil Co.* v. *United States*, 221 U. S. 1, 77) would not achieve its purpose. For in cases in which the sweeping nature of the violations warrants the issuance of a relatively broad injunction to prevent future violation—and the present case clearly comes within that class (see pp. 5–7, *supra*)—the reason for sustaining the broad injunction is to prevent a defendant from continuing his unlawful conduct in a related though somewhat different form.

Here the injunction is not a general one such as were those involved in the Labor Board and Sherman Act cases cited. Although the injunction is in substantially the language of the Fair Labor Standards Act (see pp. 9–10, *supra*), the statu-

tory requirements as to paying a specified sum per hour and time and a half for hours over forty a week are in themselves quite definite. There was thus not the need for making the injunction narrower than the statute that there is in Sherman Act cases. Furthermore, although the object of the injunctions upheld in the cases cited was to prevent defendants from substituting a new unlawful scheme for the one enjoined, here we do not have even that difficult a situation. For three of the four violations found were not merely "similar or fairly related to" respondents' prior unlawful conduct (cf. *Labor Board* v. *Express Publishing Co.*, 312 U. S. at 435); they were exactly the same sort of violation as had been charged at the original trial. Certainly the trial court's conclusion that the admitted violations required an injunction without the necessity for determining the lawfulness of the other practices charged should not render the injunction futile as to such other related practices as were in fact unlawful.

The injunction here involved is the standard form obtained by the Government in substantially all injunction suits brought under the Fair Labor Standards Act, and has been enforced in over a hundred contempt proceedings without challenge.[17] The Seventh Circuit Court of Appeals has rejected the contention that such an injunc-

[17] A substantial number of the cases are listed in note 15, p. 24, *infra*. See also *Walling* v. *Acosta*, 140 F. 2d 892 (C. C. A. 1).

tion "does not advise defendant as to what would constitute a violation," and has characterized the injunction as "clear and definite." *McComb* v. *Blue Star Auto Stores*, 164 F. 2d 329, 331, certiorari denied, 332 U. S. 855. The decision below, though not holding this form of injunction invalid, appears to preclude its enforcement against conduct not specifically found to have been unlawful prior to the injunction's issuance even as against a defendant manifesting a proclivity toward general disobedience to the Act. Such a refusal to enforce the injunction as it stands would encourage recalcitrant or contentious employers to substitute one scheme of avoiding the statutory requirements for another, and to a large extent increase the difficulties in the way of enforcing the Act. An employer, by shifting from one overtime arrangement to another—all illegal—would never be in contempt but would merely be subject to a new injunction. As the Circuit Court of Appeals for the Second Circuit declared in dealing with a similar situation, an employer might "in this way avoid all accountability for a continued series of such wrongs". "Since the upshot of a new proceeding could be no more than a new injunction, the respondent would never be brought to account for what by hypothesis is contumacy of the existing injunction." *Labor Board* v. *Lowenstein & Sons, Inc.*, 121 F. 2d 673, 674 (C. C. A. 2). See also *Fleming* v. *Tidewater Optical Co.*, 35 F. Supp. 1015, 1017

(E. D. Va.); *Walling* v. *Builders' Veneer & Woodwork Co.*, 45 F. Supp. 808, 811 (E. D. Wis.).

4. While the appellate court below did not find it necessary to rule on the question of the Administrator's right to the remedy of restitution of wages during the period of contempt, this question will necessarily arise if the decision below is reversed on the other issues. But the Fifth Circuit has already held that the Administrator has no authority to obtain such restitution in a civil contempt proceeding (*Walling* v. *Crane*, 158 F. 2d 80),[13] and the district court in this case merely followed that ruling. It is thus appropriate, and we think important, that the question be disposed of by this Court with the other issues in this case rather than remanded to the Fifth Circuit.

In *Porter* v. *Warner Holding Co.*, 328 U. S. 395, this Court held that the power of the Administrator under the Emergency Price Control Act to bring proceedings in equity for the enforcement of that statute included the power to compel restitution of overcharges to customers. The reasoning of this opinion seems applicable to the Fair Labor Standards Act as well. Cf. *Walling* v. *O'Grady*, 146 F. 2d 422 (C. C. A. 2), under the Fair Labor Standards Act.[14] But whether or not

[13] This case is now pending before the Circuit Court of Appeals for the second time on issues similar to those here presented. See 7 W. H. Cases 599, now pending before the Circuit Court of Appeals for the Fifth Circuit, No. 12,335.

[14] See also *Walling* v. *Miller*, 138 F. 2d 629 (C. C. A. 8), certiorari denied, 321 U. S. 784, and *Fleming* v. *Warshawsky*

in an original injunction proceeding the Administrator is entitled to seek restitution of wages previously withheld, we think it clear that after issuance of an injunction a court may order payment of amounts subsequently not paid employees in violation of the injunction. For this is merely to require compliance with the injunction which the statute authorizes, not to give the Administrator a different remedy under the statute. It has been the usual practice of the courts throughout the country to order restitution for violation of injunctions in civil contempt actions under the Fair Labor Standards Act, and no question as to the propriety of this practice has been raised outside of the Fifth Circuit.[15]

& *Co.*, 123 F. 2d 622 (C. C. A. 7), which required restitution under consent decrees.

[15] For example, see *Fleming* v. *Knox*, 42 F. Supp. 948 (S. D. Ga.); *Jacobs* v. *W. B. Coppersmith & Sons*, 1 W. H. Cases 922 (E. D. N. C.); *Walling* v. *Jersey Footwear*, 6 W. H. Cases 552 (D. N. J., 1946); *McComb* v. *Frank Viliari dba Mayaguez Embroidery Co.* (D. P. R.), Civil Action No. 2434, September 12, 1947; *Walling* v. *Empire Steamship Service Corp.* (S. D. N. Y.), Civil Action No. 21–168, May 16, 1947; *Walling* v. *W. H. Gale* (E. D. Va.), Civil Action No. 189, July 15, 1946; *Walling* v. *Charles Bihler* (D. N. J.), Civil Action No. 1276, March 28, 1946; *Walling* v. *Sam Schweitzer et al* (D. P. R.), Civil Action No. 527, March 6, 1946; *Walling* v. *G. & M. Cloak Co.* (E. D. N. Y.), Civil Action No. 26–13, August 6, 1945; *Fleming* v. *G. A. Mercurio Co.* (D. R. I.), Civil Action No. 397, February 12, 1945; *Fleming* v. *Ruth Merzon* (S. D. N. Y.), Civil Action No. 10–77, November 15, 1944; *Fleming* v. *Metro Sportswear, Inc.* (S. D. N. Y.), Civil Action No. 15–143, February 24, 1944; *Fleming* v. *Goldsmith Co.* (D. P. R.), Civil Action No.

The position of the Fifth Circuit in refusing to allow such relief in contempt cases for the period after issuance of the injunction is, we think, *a fortiori*, in conflict with the reasoning of the *Warner* case and of the Second Circuit, neither of which involved violation of a previously issued injunction.

Furthermore refusal to enforce the injunction by requiring the respondents to bring themselves into compliance with it is contrary to the general doctrine that the Government, like other suitors, is entitled to "the full remedial relief" necessary to compel compliance with a judgment in a civil contempt proceeding. *Penfield Co.* v. *Securities and Exchange Commission*, 330 U. S. 585, 592. See also *Parker* v. *United States*, 153 F. 2d 66 (C. C. A. 1); cf. *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 327. Such relief would necessarily include the payment of the wages which the judg-

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686, August 14, 1943; *Walling* v. *Malcolm Kenneth Co.* (D. Mass.), Civil Action No. 1217, March 5, 1943; *Fleming* v. *Daniel Nadal* (D. P. R.), Civil Action No. 527, November 14, 1941; *Fleming* v. *McAdoo* (W. D. Tenn.), Civil Action No. 76, January 20, 1941; *Andrews* v. *Sports-Wear Hosiery Mills, Inc.* (E. D. Pa.), Civil Action No. 217, May 25, 1940; see also *Walling* v. *M. Glasgall Silk Co. & Morris Glasgall* (D. N. J.), Civil Action No. 1256, April 14, 1947, where upon proof of payment of restitution plus liquidated damages, the court dismissed the contempt action. Although these cases involved consent decrees, the power of the Court to order restitution for violations occurring after entry of the decree would be the same whether the decree was entered by consent or after contest.

ment had made it respondents' duty to pay. Any relief less than that would put a premium on violation.

CONCLUSION

The decision below casts serious doubt on the enforceability and usefulness of the hundreds of injunctions obtained under the Fair Labor Standards Act. It is in conflict with principles repeatedly approved by the courts. For these reasons we believe the case sufficiently important to warrant review by this Court, and accordingly respectfully submit that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

WILLIAM S. TYSON,
Solicitor of Labor.

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No. 110

In the Supreme Court of the United States

OCTOBER TERM, 1948

WILLIAM R. MCCOMB, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

JACKSONVILLE PAPER COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 110

WILLIAM R. MCCOMB, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

JACKSONVILLE PAPER COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the district court (2nd R. 992–1011)[1] is reported at 69 F. Supp. 599. The opinion of the court of appeals (2nd R. 1121) is reported at 167 F. 2d 448.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 1948 (2nd R. 1125). The petition for

[1] The record in the original injunction proceeding (No. 336, October Term, 1942) will be cited as "1st R"; the proceedings in the district court immediately following this Court's remand of the case will be cited as "2nd R"; the record in the present contempt proceeding will be cited as "2nd R."

a writ of certiorari was filed on June 21, 1948 and was granted on October 11, 1948. The jurisdiction of this Court was invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, now Section 1254 (1) of new 28 U. S. C.

QUESTIONS PRESENTED

1. Whether in a civil contempt action proof of wilful or intentional defiance of the decree is required where compliance is the sole remedy sought, and no penalty or punishment is involved.

2. Whether a judgment enjoining underpayments in violation of the minimum wage and overtime provisions of the Fair Labor Standards Act is unenforceable in a civil contempt action because the trial court did not specifically condemn or refer to the particular unlawful practices resulting in the underpayments proved in the contempt proceeding.

3. Whether in a civil contempt action, upon proof of underpayments in violation of a decree, the Administrator is entitled to an order compelling compliance with the decree by the payment of the wages required thereby.

STATUTE INVOLVED

The pertinent provisions of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C., sec. 201) are as follows:

> SEC. 7 (a). No employer shall, except as otherwise provided in this section, employ

any of his employees who is engaged in commerce or in the production of goods for commerce—

* * * * *

(3) For a workweek longer than forty hours * * *, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

SEC. 15. (a). After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

* * * * *

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14;

SEC. 17. The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., 1934 edition, title 28, sec. 381), to restrain violations of section 15.

STATEMENT

This proceeding in civil contempt arises out of the same case which was before this Court over

five years ago *sub nom. Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564. The question before this Court at that time was whether the Fair Labor Standards Act applied to respondents' employees in certain of respondents' branch warehouses. Employees in respondent's principal plant and in other warehouses were concededly covered, and an injunction had been issued against respondents as to them. This Court's decision slightly enlarged the class of employees covered. The question here is whether respondents, who according to the finding of the court below have continued to violate the law, should be required in a civil contempt proceeding to comply with the original injunction by paying their employees the amounts which have unlawfully been withheld from them since the original injunction was entered.

A. PROCEEDINGS PRIOR TO ISSUANCE OF INJUNCTION

This action was originally instituted in July 1940 to enjoin respondents from violating the minimum wage, overtime, record-keeping, and "hot goods" provisions of the Fair Labor Standards Act (1st R. 2–21).

At a pre-trial conference, respondents admitted that they were engaged in interstate commerce at the principal office and warehouse in Jacksonville, Florida, and at five of the twelve branches (1st R. 37). They claimed that the other seven

branches were engaged exclusively in intrastate commerce (1st R. 38). As to these seven branches respondents admitted that there was no compliance with the Act inasmuch as they did not believe the Act covered the activities there carried on (1st R. 43, 38). At the beginning of the trial, counsel for respondents also admitted that there had been violations, without specifying particulars, at the other admittedly covered offices and branches of their business, but claimed that such violations ceased by April 27, 1940, or a few weeks before suit was filed (1st R. 44–47).

At the trial, the Administrator introduced evidence to establish that respondents were violating the minimum wage and overtime provisions of the Act in various ways at the admittedly covered plants as well as at the so-called "intrastate" branches. The proof that had been presented with respect to violations up to the time of the trial court's determination that the issuance of an injunction was warranted (see pp. 7–8, *infra*) showed the following:

(1) *Piece-workers.*—Respondents had failed to comply with either the minimum wage or the overtime provisions of the Act as to piece-workers, respondents' managing partner taking the position that piece-workers were not covered. This treatment of piece-workers had continued despite the contrary advice of the Wage and Hour inspector, and apparently despite the ad-

vice to respondents from their own attorney that piece rate workers were within the scope of the Act. (1st R. 185–187, 576, 577.)

(2) *Concealment of overtime hours* by crediting such time to other workers who had not worked the maximum workweek. Under this system, the employees who worked the overtime collected at the straight-time rates from the other employees for the hours credited to the employees who had not worked them (1st R. 182–184, 196).

(3) *Keeping a separate account* and paying employees separately, on so-called "extra labor vouchers," for hours worked in excess of the maximum workweek and not showing such overtime hours on the regular time book (1st R. 189–192, 200–206, 211–212).

(4) *Misclassifying* certain salaried employees as exempt "executive" and "administrative" employees (1st R. 82–103, 120–128, 194). The evidence of the Wage and Hour inspector shows that officials of the Southern Industries plant were advised that they appeared to be misclassifying certain salaried employees who did not meet the requirements of the regulations issued by the Administrator pursuant to the Act. The inspector offered to furnish defendant C. G. McGehee a copy of the regulation and to explain it, but Mr. McGehee turned down the offer with the statement that he was sufficiently familiar with the regulation (1st R. 194).

(5) *The accumulated hours plan.*—Shortly before the institution of this suit in 1940, respondents "through a wholesale firing of all employees on Saturday, April 27, 1940 and a wholesale rehiring of the same employees on Monday, April 29, 1940" (2d R. 998–999) inaugurated a plan by which these employees received the same compensation as before, purportedly arranged so as to cover both straight time and overtime (2nd R. 111–139; 1st R. 315–335, 543–558). Although respondents believed the plan lawful under *Walling* v. *Belo Corp.*, 316 U. S. 624 (2nd R. 1000), the court in the contempt proceeding [2] found it illegal because it set up "a completely false and fictitious method of computing compensation without regard to the hours actually worked" (2nd R. 1001), a finding from which respondents have not appealed.

(6) *Section 11 (c) violations (record-keeping violations).*—In addition to respondents' failure to keep any records of the hours of the piece-rate workers (1st R. 182, 197–198), false records were kept with respect to employees whose overtime hours were credited to other employees and

[2] The plan is described in more detail in the findings of the district court at the contempt trial (2nd R. 999–1001). Extensive testimony as to this practice was presented by both parties at the original trial, both before and after the court shut off evidence as to violations generally (1st R. 315–335; 543–558); the record in the contempt proceeding incorporated a portion of the original record with respect to the plan (2nd R. 111–139).

employees who were paid by "extra labor vouchers" pursuant to the practices described *supra*.

After hearing the Government's evidence on these matters for almost three days (1st R. 39–335), the trial court stated that it appeared from the admissions as to violations and from the evidence that respondents "have not heretofore complied with the Act" (1st R. 335); the court thereupon directed that further evidence relate to the question whether some of respondents' branches were covered by the Act (1st R. 335–336).[3] At the close of the trial the court held that the employees at the seven disputed branches were not subject to the Act, but concluded from respondents' admissions of violations at the branches concededly in interstate commerce that the statute had been violated and that an injunction should issue as to those branches (1st R. 707–708). The court made no findings as to particular practices at those branches, inasmuch as it had shut off the evidence as to such matters (1st R. 711). An injunction was entered limited to the other establishments, generally restraining violations of *any* of the provisions of the Act and particularly Sections 6 (minimum wage), 7 (overtime), 15 (a) (1) (shipment of "hot goods"), and 11 (c) (record-keeping) (1st R. 712–718).

[3] Additional evidence with respect to violation was, however, heard (1st R. 543–558).

Both parties appealed to the circuit court of appeals. That court held that some of respondents' employees at the disputed warehouses were engaged in interstate commerce, and that the Administrator was therefore entitled to relief as to them (1st R. 743–745). In addition, the appellate court eliminated from the injunction as too broad the general prohibition against "violating *any* of the provisions" of the Act (1st R. 745). The cause was therefore ordered remanded for the framing of a new decree. On writ of certiorari, this Court held that the activities of some additional employees at the disputed warehouses were in commerce, and affirmed the judgment of the circuit court of appeals as thus modified, stating that "Whether additional evidence must be taken on any phase of the case so that a decree may be drawn is a question for the District Court." 317 U. S. 564, at 572.

Pursuant to the mandate of this Court and the judgment of the circuit court of appeals, the district court without further hearing (2nd R. 994) entered an amended and modified judgment, June 3, 1943 (2nd R. 1111–1119). The amended judgment omitted the general injunction against violating *any* of the provisions of the Act. The judgment specifically enjoined respondents, *inter alia*, from paying employees covered by the Act [4]

[4] The judgment contained specific provisions as to which employees were covered by the Act (2nd R. 1111–1119).

"less than thirty (30¢) cents an hour, or, after October 23, 1945 * * * less than forty cents (40¢) an hour", except as permitted by orders of the Administrator issued under Section 8 or 14 of the Act, and from employing such employees "for a workweek longer than forty (40) hours unless such employee receives compensation for his employment in excess of forty (40) hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed". (Supp. R. 4-5, 7, 10-11.) No appeal was taken from this judgment.

B. PROCEEDINGS IN THE CONTEMPT ACTION

This civil contempt proceeding was instituted by the Administrator in April 1946. The application for an adjudication in civil contempt alleged that respondents had not been complying with the minimum wage, overtime, and record-keeping provisions of the judgment in many respects (2nd R. 1–15). The application prayed that respondents be required to terminate their continuing violations and to "make payment of the amounts of unpaid wages due their affected employees" (2nd R. 14). After trial, the district court found widespread violations of the Act by respondents (1) by misclassifying some twenty employees as exempt "executive" or "administrative" employees, (2) by employing certain piece

workers in excess of the maximum workweek without paying them overtime compensation, (3) by excluding from the regular rate of pay of virtually all employees a wage increase granted in the guise of a so-called "bonus," and (4) by applying to numerous employees a "completely false and fictitious method of computing compensation" in the form of an "accumulated hours plan" (2nd R. 998–1008).[5] Except for the third, these violations were of the same nature, and in some instances concerned the same employees, as were the subject of the trial in the original injunction proceeding (1st R. 82–95, 120–128; 2nd R. 241–259, 267–286).

The district court nevertheless held that because the prior judgment did not specifically adjudicate the invalidity of the above practices, the court lacked "discretionary power" to punish the defendants for contempt, inasmuch as "to constitute civil contempt there must be some evidence of a wilfull and intentional violation of a Court Order" (2d R. 1010). The finding of absence of wilfullness was seemingly predicated on the conclusion that none of the "specific provisions of

[5] The court of appeals stated in its opinion that the decree was "in general complied with" (2nd R. 1124). In view of the proof and findings of widespread violations of the sections of the Act referred to in the decree, the import of this statement is not clear. There was no such finding by the trial court nor does the record support such a finding.

the former Judgments prohibiting the doing of any specific thing" had been violated (2d R. 1010–1011).[6] The court further held that it had no power under the statute to allow the administrator to enforce the payment of the unpaid statutory wages in order to enforce compliance with the former judgments, relying on the prior decision of the Fifth Circuit in *Walling* v. *Crane*, 158 F. 2d 80.

The court thereupon treated the application for an adjudicaton in contempt as an amended complaint seeking a broadening of the previous injunction, and entered judgment issuing such an injunction (2d R. 1011–1016).

Both parties appealed.[7] The circuit court of appeals affirmed both the ruling that respondents had violated the Act and the refusal to adjudicate respondents in civil contempt (2d R. 1121–1125), stating that the trial court was justified in the "conclusion that there was no wilful evasion of the law or the injunctions, since they did not specifically refer to or condemn" the particular

[6] With respect to the accumulated hours plan the court found (2nd R. 1000) that respondents thought their action lawful under *Walling* v. *Belo Corp.*, 316 U. S. 624. The court made no similar finding as to respondents' beliefs with respect to any of the other practices in issue.

[7] Respondents did not challenge the findings that its "accumulated hours plan" was invalid nor that three of its employees had been misclassified as "executives," but did appeal from the other findings of violation.

unlawful practices proved in the contempt proceeding (*Id.* at 1124).*

SUMMARY OF ARGUMENT

I

It is well established that an adjudication in civil contempt does not depend upon proof of willful or intentional defiance of a decree where compliance is the sole remedy sought. Whether respondents meant to violate the injunction or not, they calculatingly risked crossing the line of illegality when they engaged in the same practices which the Administrator charged were unlawful at the original trial. Civil liability for damage thus done does not depend upon whether respondent had a guilty mind. In civil contempt to obtain the benefits of a decree, and not punishment or penalties of any kind, the belief, motive, or intent of the defendant not to violate the injunction does not excuse him if in fact his acts resulted in a violation of it.

The refusal of the courts below to enforce the terms of the decree in the instant case is par-

* The court ruled that there was "no need to enquire whether, if there had been [contempt] the court could award reparation for unpaid wages as a purging of the contempt," but it granted leave to the Administrator to apply to the district court to seek "retroactive reparation" as an "incident" of the broadened injunction (2nd R. 1125). But cf. the same court's decision in *Walling* v. *Crane*, 158 F. 2d 80, discussed *infra*, pp. 41, 52, 53.

ticularly without justification, since it excused not only practices of possibly doubtful illegality, but also practices unquestionably illegal and which respondents knew were claimed to be illegal by the Government when the injunction was issued. In any event, whatever reason there might be for reluctance to *punish* or *penalize* for unintended violations resulting from an erroneous interpretation of the decree, there is no equitable basis for relieving defendant of the purely civil obligation to bring himself into compliance with the terms of the decree and of the law, and to disgorge the benefits accruing to him by reason of his resolving doubts against compliance.

II

The judgment enjoining underpayments in violation of the minimum wage and overtime provisions of the Act was sufficiently definite for enforcement in a civil contempt action even though the particular practices proved in the contempt proceeding were not specifically condemned in the judgment. The judgment in terms clearly and specifically directs the respondents to pay the statutory minimum wages and overtime compensation. Respondents did not appeal from this judgment nor seek to have it modified prior to this contempt proceeding. In refusing to enforce the decree according to its terms, the decision below conflicts with this Court's decisions re-

affirming "the long-standing rule that a contempt proceeding does not open to reconsideration the legal or factual basis of an order alleged to have been disobeyed * * *." *Maggio* v. *Zeitz*, 333 U. S. 56, 68–69; *Swift & Co.* v. *United States*, 276 U. S. 311, 327–328; see also *United States* v. *United Mine Workers*, 330 U. S. 258, 293.

The propriety and practical necessity in the instant case, of enjoining underpayments without limitation to particular practices resulting in underpayment is sustained both by the restricted nature of the statutory requirement and by the character and extent of respondent's past unlawful conduct. Although the injunction is in substantially the language of the pertinent sections of the Act, the statutory requirements are in themselves sufficiently definite. As a matter of fact three of the four violations found in the contempt proceeding were not merely "similar or fairly related to" respondents' prior unlawful conduct (cf. *Labor Board* v. *Express Publishing Co.*, 312 U. S. 426, 435); they were exactly the same sort of illegal practices as had been charged at the original trial. In cases in which the sweeping nature of the violations warrants the issuance of a relatively broad injunction to prevent future violations in a related though somewhat different form, this Court has repeatedly recognized the propriety of injunctions not limited to precise acts found to have been unlawful. The present

case clearly comes within this class. A decree limited to underpayments resulting from specific practices would be largely ineffectual because of respondents' demonstrated proclivity for violation and the comparative ease with which a recalcitrant employer can shift from one device to another for avoiding the statutory requirements.

III

Effective remedial relief in a civil contempt action for underpayments in violation of the decree requires that the contemnor be ordered to purge the contempt by restoration of the underpayments. The reasoning of *Porter* v. *Warner Holding Co.*, 328 U. S. 395, holding that the Price Control Administrator's authority to bring enforcement proceedings in equity includes the power to compel restitution of overcharges to customers, appears applicable as well to the Fair Labor Standards Act. But whether or not in an original proceeding the Administrator is entitled to seek restitution of wages previously withheld, clearly after issuance of an injunction a court of equity may and should order restitution of subsequent underpayments in violation of the injunction. Such a restoration order is the usual remedy characteristic of civil contempt, and is a necessary part of "the full remedial relief" to which the Government, like other suitors, is entitled to compel compliance with a judgment in a civil contempt action. Any

relief less than reparation of the underpayments, far from compelling compliance, puts a premium on violation of the injunction and by permitting the contemnor to retain the fruits of his violations encourages "experimentation with disobedience."

The suggestion of the court below that such a restitution order might conflict with the employees' right to recover under Section 16 (b) of the Act is without foundation. Although employees have a private right to their wages and to be made whole by way of liquidated damages for underpayments, the Administrator has an independent interest—on behalf of the public—in compelling the payment of the statutory wages. The two remedies are distinct and supplementary; they are not irreconcilable. *Porter* v. *Warner Holding Co.*, 328 U. S. 395, 398, 402, n. 5; *Bowles* v. *Skaggs*, 151 F. 2d 817, 821 (C. C. A. 6); *Creedon* v. *Randolph*, 165 F. 2d 918, 919–920 (C. C. A. 5).

Nor is there any basis for the apparent assumption by the courts below that a restitution order represents punishment or a penalty. Such an order is designed merely to accomplish a basic function of civil contempt—"to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." See *United Mine Workers* opinion, 330 U. S. at 300, 303–304; *Penfield Co.* v. *Securities and Exchange Commission*, 330 U. S. 585, 594.

ARGUMENT

I

THE COURTS BELOW ERRED IN RULING THAT PROOF OF WILFUL OR INTENTIONAL DEFIANCE OF THE DECREE IS REQUIRED FOR AN ADJUDICATION IN CIVIL CONTEMPT WHERE COMPLIANCE IS THE SOLE REMEDY SOUGHT

The courts below have not denied that respondents were violating the injunction issued after the decision of this court in 1943. They held, however, that respondents' conduct could nevertheless not be found in contempt because the violations were not "wilful". This apparently meant that since the unlawful practices committed were not referred to specifically in the judgment and had not been explicitly held unlawful by the enjoining court, respondents (though doubtless intending what they were doing) were not aware that such conduct was covered by the injunction.

For present purposes, we shall assume the correctness of the lower courts' finding that respondents' unlawful conduct was not a "wilful" violation of the injunction. Since respondents knew that they were engaging in precisely the same practices charged by the Administrator to be unlawful at the first trial and that the injunction was in the language of the statute, it is clear, however, that respondents calculatingly

risked crossing the line of illegality, whether they meant to violate the injunction or not.

The holding that proof of wilful or intentional defiance of a decree is required in a civil contempt action in order to secure simply the remedy of compliance—without any punishment—conflicts with the general rule consistently recognized in the circuit courts of appeals and the district courts and by leading secondary authorities. *Telling* v. *Bellows-Claude Neon Co.*, 77 F. 2d 584, 586 (C. C. A. 6), certiorari denied, 296 U. S. 594; *Proudfit Loose Leaf Co.* v. *Kalamazoo Loose Leaf B. Co.*, 230 Fed. 120, 132 (C. C. A. 6); *Lustgarten* v. *Felt & Tarrant Mfg. Co.*, 92 F. 2d 277, 280 (C. C. A. 3); *Labor Board* v. *Whittier Mills Co.*, 123 F. 2d 725, 727 (C. C. A. 5); *Metallizing Engineering Co.* v. *B. Simon*, 64 F. Supp. 848 (W. D. N. Y.); *Bowers* v. *Pacific Coast Dredging & Reclamation Co.*, 99 Fed. 745, 755 (C. C. N. D. Calif.); *Atlantic Giant Powder Co.* v. *Dittmar Powder Manufacturing Co.*, 9 Fed. 316 (C. C. S. D. N. Y.); *Freeman* v. *Premier Mach. Co.*, 25 F. Supp. 927, 928 (D. Mass.); *Calculagraph Co.* v. *Wilson*, 136 Fed. 196, 199 (C. C. D. Mass.); *Matthews* v. *Spangenberg*, 15 Fed. 813, 814 (C. C. S. D. N. Y.); 2 High, *Injunctions* (4th ed., 1905) §§ 1416–20; 1 Beach, Injunctions (1895) § 250; Swayzee, *Contempt of Court in Labor Injunction Cases* (1935), pp. 20–21; Moskovitz, *Contempt of Injunctions*,

Civil and Criminal, 43 Columbia Law Review 780, 793–5 (1943), and cases cited.

These authorities uniformly recognize that wilfulness is a characteristic distinguishing criminal from civil contempt, and that while it "may affect the extent of the penalty" to be imposed for contempt, the absence of wilfulness does "not relieve from liability for a civil contempt" (see *Proudfit* case, *supra*, at 132, 134). "In civil contempt the general rule is that the defendant need not have acted wilfully, and this would seem correct, inasmuch as civil liability for damage done ought not to depend on whether or not the defendant has a 'guilty mind.'" Moskovitz, *supra*, at 794–795. Wilfulness is not a factor because one of the primary functions of civil contempt is to secure to the complainant the rights awarded by the injunction and to protect parties affected from loss or damage resulting from violation of the injunction. The purpose is remedial, not punitive, to preserve for complainant the "benefit from orders entered in its behalf" and "to compensate the complainant for losses sustained." See *United States* v. *United Mine Workers*, 330 U. S. at 302, 303–304; *Penfield Co.* v. *Securities & Exchange Comm.*, 330 U. S. at 593–594. Thus the fact that "defendants did not understand the provisions" of the decree and "did not know that it was being violated," but simply

"followed the advice of counsel and acted in good faith," should not "relieve defendant for civil contempt liability." *Metallizing Engineering Co.* v. *Simon*, 64 F. Supp. at 849.

As the Fifth Circuit itself has said, in a proceeding "in civil contempt to obtain the benefits of a decree and not one in criminal contempt to hold the respondents guilty of a crime, * * * the question for decision is not one of the intent with which, but simply whether, certain acts were done." *Whittier Mills Co.* case, *supra*, at 727. And in *United States* v. *United Mine Workers*, 330 U. S. 258, this Court recently indicated that willfulness was not an element of civil contempt, saying "The charge in the petition of 'wilfully * * * and deliberately' disobeying the restraining order indicates an intention to prosecute criminal contempt" (330 U. S. at 297n).

The courts below apparently regarded the proceeding as punitive in nature and failed to recognize that the only sanction sought by the Administrator is the "usual remedy" characteristic of civil contempt, designed not to punish but only to accomplish a basic "function of civil contempt"—"to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." See *United Mine Workers* opinion, 330 U. S. at 300, 303–304; *Maggio* v. *Zeitz*, 333 U. S. 56 at 68. Where, as

in the instant proceeding, no penalty or punishment of any kind is sought, but only the strictly civil relief of compliance with a duty imposed by the decree and by the law, "the belief, motive, or intent of the defendant not to violate the injunction does not excuse him if in fact his acts resulted in a violation of it. The breach of the injunction consists in doing the forbidden thing, and not in the intention with which it is done." See *Rodgers* v. *Pitt,* 89 Fed. 424, 429 (C. C. D. Nev.).

The blanket refusal by the courts below to enforce the terms of the decree in the instant case is particularly without justification, since it excused not only practices of possibly doubtful illegality but also practices unquestionably illegal and which (with the possible exception of the bonus plan) respondents knew were claimed to be illegal by the Government *when the injunction was originally issued.* There could not have been any reasonable doubt, for example, about the applicability of the Act to piece workers after this Court's decision in January 1945 in *United States* v. *Rosenwasser,* 323 U. S. 360. Yet the record in the contempt proceeding shows that respondents were still underpaying piece workers and asserting that they were not within the scope of the Act a year and half after that decision (2nd R. 1007–1008; 244–246, 252, 254–256). Likewise,

the findings of the district court (2nd R. 1005–6) show that there was no reasonable ground for respondents to have misclassified their employees as "executives." The evidence that these employees did not meet the prescribed standards to qualify for the exemption was found by the district court to be "so conclusive" as to make it "unnecessary for the Court to summarize the reason for the disqualification of each particular employee" (2nd R. 1006). Similarly, the characterization by the district court of the "accumulated hours plan" as a "completely false and fictitious method of computing compensation without regard to the hours actually worked" (2nd R. 1001), would seem to foreclose the conclusion that there was reasonable doubt as to the illegality of that scheme, particularly after subsequent decisions of this Court.[9] Thus, with the possible exception of the bonus plan, it cannot fairly be said of any of the illegal practices proved in the contempt proceedings that there was reasonable uncertainty of their illegality.

In any event, whatever reason there might be for reluctance to punish or penalize respondents

[9] The decisions in the *Helmerich & Payne, Harnischfeger and Youngerman-Reynolds* cases, decided November 6, 1944, and June 4, 1945, respectively, made it plain that any false or fictitious or artificial method of computation was invalid. *Walling* v. *Helmerich & Payne*, 323 U. S. 37; *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427; *Walling* v. *Youngerman-Reynolds Hardwood Co.*, 325 U. S. 419.

for unintended violations resulting from an erroneous interpretaton of the decree, there is no equitable basis for permitting respondents to breach the injunction without even the risk of having to relinquish to the wronged employees the fruits of their violations. As suggested some years ago by the Seventh Circuit Court of Appeals in a patent infringement case, a defendant who has been enjoined has no "equity" to hew close to the line of disobedience and avoid a citation for contempt when he oversteps the line. *Charles E. Hires Co.* v. *Consumers' Co.*, 100 Fed. 809, 813 (C. C. A. 7); see also *Williams* v. *Mitchell*, 106 Fed. 168, 172 (C. C. A. 7). It has long been recognized that "any person who has been enjoined, who undertakes to see how far he can go or what he may do without crossing the prohibited line, places himself in a dangerous condition, and is always liable to be deemed guilty of contempt; for his own judgment may be so warped by his feelings or necessities that he is liable, even unintentionally, to overstep the legal bounds" (*Rodgers* v. *Pitt*, 89 Fed. 424, 429 (C. C. D. Nev.)). "It is not proper for a defendant who has been enjoined to experiment with a view of determining how near he may come to a violation of the injunctions without actually violating it." 2 High, *Injunctions*, § 1427.

As this Court has pointed out, even criminal penalties may be incurred through such "uninten-

tional" illegal conduct. See *Horning* v. *District of Columbia*, 254 U. S. 135, 137, where Mr. Justice Holmes, speaking for the Court said:

> It may be assumed that he [defendant] intended not to break the law but only to get as near to the line as he could, which he had a right to do, but if the conduct described crossed the line, the fact that he desired to keep within it will not help him. It means only that he misconceived the law.

Cf. also *United States* v. *Griffith*, 334 U. S. 100, 105–106, and *United States* v. *Paramount Pictures*, 334 U. S. 131, 173, in which this Court pointed out that proof of "specific intent" to violate the Sherman Act is not required where violation "results as the consequence of a defendant's conduct or business arrangements" (334 U. S. at 105–106, 173). Such specific intent is necessary "only where the acts fall short of the results condemned by the Act" (*id.* at 105).

There is clearly no justification for relieving a defendant of the risk of purely civil relief which requires no more than that he bring himself into compliance with the terms of a decree and of the law. The consequence of the decision below is to permit the noncomplying employer to retain the advantages accruing from his resolving doubts against compliance, at the expense not only of the public interest in effective enforcement and

of employees' rights, but also of complying competitors.

II

A JUDGMENT ENJOINING UNDERPAYMENTS IN VIOLATION OF THE MINIMUM WAGE AND OVERTIME PROVISIONS OF THE ACT SHOULD BE ENFORCED IN A CIVIL CONTEMPT ACTION EVEN THOUGH THE PARTICULAR UNLAWFUL PRACTICES PROVED IN THE CONTEMPT PROCEEDING WERE NOT SPECIFICALLY MENTIONED IN THE JUDGMENT

The refusal of the courts below to enforce the decree according to its terms was error not only (A) because it conflicts with the long-standing rule that a decree may not properly be challenged or limited short of its terms in a civil contempt proceeding, but also (B) because the decree was clearly valid and sufficiently specific in scope to forbid the particular practices resulting in the illegal underpayments proved in the contempt proceedings here.

A. THE SCOPE OF THE DECREE MAY NOT BE CHALLENGED OR LIMITED SHORT OF ITS TERMS IN A CIVIL CONTEMPT PROCEEDING

Sections 2, 3 and 6 of the judgment specifically directed respondents to pay the minimum wages and overtime compensation required by Sections 6 and 7 of the Act, and to keep the records required by Section 11 (c) of the Act and by the

Administrator's regulations issued pursuant thereto.[10]

Notwithstanding these plain directions, respondents, according to the findings of the district court, continued to underpay many of its employees contrary to the requirements of Sections 6 and 7 of the Act and did not keep the prescribed records (2nd R. 1001–9). In refusing to enforce the decree according to its terms, the decision below conflicts with this Court's decisions reaffirming "the long-standing rule that a contempt proceeding does not open to recon-

[10] These sections of the decree enjoin respondents from:

"(2) * * * paying any of their employees, engaged in commerce or in the production of goods for commerce, employed at Jacksonville, Florida, or elsewhere, wages at rates less than [the minimum amounts prescribed in Section 6 of the Act] * * * contrary to the provisions of Sections 6 and 15 (a) (2) of the Act (2nd R. 1112–13, 1114–15, 1118).

"(3) Employing any of their said employees for a workweek longer than forty (40) hours unless such employee receives compensation for his employment in excess of forty (40) hours in such workweek at a rate not less than one and one-half times the regular rate at which he is employed, contrary to the provisions of Sections 7 and 15 (a) (2) of the Act (2nd R. 1113, 1115–16, 1119).

"(6) Failing to make, keep, and preserve records of the persons employed by them and of the wages, hours and other conditions and practices of employment maintained by them as prescribed by the regulations, as amended, of the said Administrator issued pursuant to Section 11 (c) of the Act, which regulations, and amendments thereto, are known as Title 29, Chapter V, Code of Federal Regulations, part 516, or by any amendments to such regulations * * *." (2nd R. 1114, 1116–17, 1119.)

sideration the legal or factual basis of an order alleged to have been disobeyed * * *" *Maggio* v. *Zeitz*, 333 U. S. 56, 68–69; *Swift & Co.* v. *United States*, 276 U. S. 311, 327–328; see also *United States* v. *United Mine Workers*, 330 U. S. 258, 293. This aspect of the decision is also contrary to another decision of the Fifth Circuit in the case of *Labor Board* v. *American Mfg. Co.*, 132 F. 2d 740. In holding respondent there in contempt of a decree phrased in much broader and more general terms than the decree here involved, the court said that the contention "that the scope of the decree * * * long since become final, may now be limited *short of its terms*, is wholly without merit, for a decree entered with jurisdiction must be obeyed as entered. * * * Its terms are clear and comprehensive and if they read more broadly than respondent intended that they should, the time and manner of avoiding that breadth was by objections to the decree before its entry and not by disobedience of it afterwards" [p. 742, italics supplied].

While respondents appealed from the original decree entered in this case, they did not appeal from the decree as modified.[11] The trial court

[11] Moreover, even their appeal from the original decree did not challenge its scope, but claimed that no injunction at all should issue because of the claimed cessation of violations (1st R. 737; see also respondents' brief on that appeal, pp. 29–43).

at the injunction trial did not rule on the legality of the particular practices here involved, because it did not think such a determination necessary to the issuance of an injunction after some violations had been admitted by respondent. But the decree was drafted in terms to enjoin any such practices which were illegal. Respondents were fully aware of the scope of this decree and of the fact that some of the particular practices were claimed to be illegal. If they had "doubts as to the applicability of the injunction, they [might have] petition[ed] the court granting it for a modification or construction of the order." See *Regal Knitwear Co.* v. *Labor Board,* 324 U. S. 9, 15. They nevertheless did not appeal nor seek to have the decree modified or clarified, but chose to follow their own "private determination of the law." Cf. *United States* v. *United Mine Workers,* 330 U. S. at 293. The decision below excusing respondents' violations under such circumstances tends to "foster experimentation with disobedience" of injunctions (*Maggio* v. *Zeitz,* 333 U. S. at 69) and thus to hamper seriously the effective enforcement not only of the Fair Labor Standards Act but of many other Federal statutes which provide similar enforcement procedures.[12]

[12] See *Maggio* v. *Zeitz,* 333 U. S. at 68, n. 3.

B. THE DECREE WAS VALID IN SCOPE AND LEGITIMATELY EXTENDED TO ANY OF THE PRACTICES RESULTING IN PAYMENT OF LESS THAN THE STATUTORY MINIMUM AND OVERTIME WAGES

The decree, as modified after the first appeal of this case, enjoined violations, not of the Act generally, but only of the specific sections which previously had been violated by defendants extensively and over a substantial period of time. (See Statement, *supra*, pp. 5–8). The practices in question in the contempt proceeding were all continuing and varying means of violating the same specified sections.

Although the injunction is in substantially the language of the Fair Labor Standards Act (see pp. 2–3, 27, *supra*), the statutory requirements as to paying a specified sum per hour and time and a half for hours over forty a week are in themselves quite definite. We do not mean to suggest that there may not be some close questions and perplexing problems in computing the compensation due under the statute (see, for example, *Walling* v. *Belo Corp.*, 316 U. S. 624; *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 582–583). There is, however, not the same need for making the injunction narrower than the statutory language that there is in anti-trust cases where the statutory prohibition affects "the whole conduct of the defendants' business" (cf. *Swift* v. *United States*, 196 U. S. 375, 396), or in Labor Board cases where the statutory requirement involves a wide range of conduct of varied nature. Yet even in anti-trust and Labor Board cases this Court has sustained injunctions

substantially broader in scope than the injunction involved in the instant case, on the ground that the agency or court issuing the order "might have reasonably concluded from the evidence that such an order was necessary to prevent" further violation of the statutory provision previously violated. See *May Stores Co.* v. *Labor Board*, 326 U. S. 376 at 390; *Standard Oil Co.* v. *United States*, 221 U. S. 1, 77; *Local 167* v. *United States*, 291 U. S. 293, 299.[13] "Injunctions in broad terms

[13] In *Labor Board* v. *Express Publishing Co.*, *supra*, although violations of one section of the Wagner Act were held insufficient to warrant a general prohibition of violations of another broad section (Section 8 (1)), this Court sustained a provision enjoining generally interference "in any manner" with the union's right to bargain collectively with the company in violation of the particular section (8 (5)), which had been previously violated. The comprehensive summary of the Labor Board decisions in *May Stores Co.* v. *Labor Board*, 326 U. S. 376, 389-391, cites numerous cases upholding Section 8 (1) orders issued both subsequent and prior to the *Express Co.* decision. The summary also shows at a glance that rarely does a court limit an injunction to specific acts or practices where there have been more than one type of violation of the same statutory provision.

Under the Sherman Act, this Court has upheld a decree enjoining defendants *inter alia* "from in any way conspiring or combining to violate the act" and prohibiting "*all agreements* between the subsidiary corporations or other stockholders in the future, *tending* to produce or bring about further violations of the act." This provision of the decree was approved "not as depriving [defendants] * * * of the power to make normal and lawful contracts or agreements, but as restraining them from, by *any device whatever*, recreating *directly or indirectly* the illegal combination which the decree dissolved" (italics supplied; *Standard Oil Co.* case, 221 U. S. at 79, 326 U. S. at 391).

are granted even in acts of the widest content, when the court deems them essential to accomplish the purposes of the act." *May Stores* decision, 326 U. S. at 391.

In the instant case, furthermore, three of the four violations found were not merely "similar or fairly related to" respondents' prior unlawful conduct (cf. *Labor Board* v. *Express Publishing Co.*, 312 U. S. at 435); they were exactly the same sort of illegal practices as had been charged at the original trial. Certainly the trial court's conclusion that the admitted violations required an injunction without the necessity for determining the lawfulness of the other practices charged should not render the injunction futile as to such other related practices as were in fact unlawful.

The injunction here involved is the standard form obtained by the Government in substantially all injunction suits brought under the Fair Labor Standards Act, and has been enforced in over a hundred contempt proceedings without challenge.[14] The Seventh Circuit Court of Appeals has rejected the contention that such an injunction "does not advise defendant as to what would constitute a violation," and has characterized the injunction as "clear and definite." *McComb* v. *Blue Star Auto Stores*, 164 F. 2d 329, 331, certiorari denied, 332 U. S. 855. The decision below,

[14] A substantial number of cases are listed in note 20, p. 44, *infra*. See also *Walling* v. *Acosta*, 140 F. 2d 892 (C. C. A. 1).

though not holding this form of injunction invalid, appears to preclude its enforcement against conduct not specifically found to have been unlawful prior to the injunction's issuance even as against a defendant manifesting a proclivity toward general disobedience to the Act. Such a refusal to enforce the injunction as it stands would encourage recalcitrant or contentious employers to substitute one scheme of avoiding the statutory requirements for another, and to a large extent destroy the efficacy of the injunction remedy as a means of enforcing the Act.

This Court has repeatedly recognized the propriety of this type of injunction, which is not limited to the precise acts found to have been unlawful. *May Department Stores Co.* v. *Labor Board*, 326 U. S. 376, 389–391; *Local 167* v. *United States*, 291 U. S. 293, 299; cf. *Labor Board* v. *Express Publishing Co.*, 312 U. S. 426; *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 51–52; *Standard Oil Co.* v. *United States*, 221 U. S. 1, 77. As pointed out in the above cited decisions, in cases in which the sweeping nature of the violations warrants the issuance of a relatively broad injunction to prevent future violations—and the present case clearly comes within that class (see pp. 5–8, *supra*)—the reason for sustaining the broad injunction is to prevent a defendant from continuing his unlawful conduct in a related though somewhat different form. "Where the

proclivity for unlawful activity has been as manifest as here, the decree should operate as an effective deterrent to a repetition of the unlawful conduct." See *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 186.

As this Court pointed out in the *Crescent Amusement* case, a general prohibition "is often the only practical remedy against continuation" of violations. *Ibid.* The instant case well illustrates that a decree limited to underpayments resulting from specific practices would be unreasonably restrictive and merely conducive to "disguised continuance" of the violations. Cf. *Southport Petroleum Co.* v. *Labor Board*, 315 U. S. 100, 106; *Regal Knitwear Co.* v. *Labor Board*, 324 U. S. 9, 14. Respondents here, for example, for some months after the Act first went into effect were paying some employees a weekly salary without regard to the overtime requirements of the Act. This was in violation of the Act under the decisions in *Overnight Motor Co.* v. *Missel*, 316 U. S. 572 and *Warren-Bradshaw Drilling Co.* v. *Hall*, 317 U. S. 88. If the injunction extended only to this particular practice, the employer could artificially break up the daily wage into so-called straight-time and overtime segments, or he could artificially compute an hourly rate under the so-called x-formula. These practices would likewise be in violation of the overtime provisions of the Act under the decisions in *Walling* v.

Helmerich & Payne, 323 U. S. 37; *Castle* v. *Walling*, 153 F. 2d 923 (C. C. A. 5); *Watkins* v. *Hudson Coal Co.*, 151 F. 2d 311 (C. C. A. 3), certiorari denied, 327 U. S. 777; and *Seneca Coal & Coke Co.* v. *Lofton*, 136 F. 2d 359 (C. C. A. 10), certiorari denied, 320 U. S. 772.

Under the theory of the district court, however, the employer would not be in contempt of the initial decree because he had changed from one method of failure to pay overtime to another. If the district court enters a further injunction, as in this case, there would be nothing, under the reasoning of the courts below, to prevent the employer from again altering his method of compensation and adopting devices such as those held illegal in *Walling* v. *Harnischfeger Corp.*, 325 U. S. 427, or in *149 Madison Ave. Corp.* v. *Asselta*, 331 U. S. 199, or in *Bibb Mfg. Co.* v. *Walling*, 164 F. 2d 179 (C. C. A. 5). "Indeed it is not altogether fantastic to suppose that over a period of years [respondents] might in this way avoid all accountability for a continued series of such wrongs"—cf. *Labor Board* v. *Lowenstein & Sons, Inc.*, 121 F. 2d 673, 674 (C. C. A. 2). "Since the upshot of a new proceeding could be no more than a new injunction, the respondent would never be brought to account for what by hypothesis is contumacy of the existing injunction." *Ibid.* Thus the underlying reason for granting a broad injunction—to prevent repetition of the same

or similar statutory violations previously committed—is completely defeated if enforcement in a contempt action is to be limited to precisely the same practices and methods previously used.

To anticipate all possible fictitious overtime devices and to enjoin each of them specifically would be a virtual impossibility. This is a situation in which "it is hard to see how the decree could be made less general and more specific" and still provide "effective assurance that no such opportunity [for the unlawful result] will be available in the future." *United States* v. *Crescent Amusement Co.*, 323 U. S. at 188, 190. As this Court has stated, to be effective the decree "should be broad enough to prevent evasion" (*Local 167* v. *United States*, 291 U. S. at 299), and if a general prohibition places some burden on one who has shown "proclivity in the past" for violation, "it is a burden which those who have violated the Act must carry." *Ibid.*; *United States* v. *Crescent Amusement Co.*, *supra*.

The record at the original trial, as revealed in the summary of evidence in the Statement *supra*, pp. 4–12, shows that we are not dealing here with employers who have inadvertently committed isolated violations. We are dealing with employers who have openly and unequivocally manifested their antipathy to the Act and a proclivity in the past for seeking to avoid compliance. Since the effective

date of the Act, which is now more than ten years old these respondents have actively contested its application to their activities, have resolved every doubt against compliance, have resorted to a variety of devices which might afford them some excuse for noncompliance, and at one time even resorted to practices which amounted to deliberate falsification.[15] In short, the evidence before the court at the original trial revealed that respondents, far from being dependable risks for voluntary compliance, were not only contentious (see opinion of the court of appeals in 128 F. 2d at 399), but had a long record of studied efforts to avoid compliance. The record in the contempt proceeding demonstrates that these efforts have continued along a pattern substantially the same as that shown when the original decree was entered seven years ago.

Against this background of long continued and persistent violation, respondents, having been found in violation of specified provisions of the Act, cannot reasonably be heard to complain that "the injunction binds generally" as to violations of these provisions. Cf. *Local 167* v. *United States*, 291 U. S. 293 at 299. Nor is it reasonable to deal

[15] See Statement, *supra*, p. 6, describing the respondents practices prior to the original trial of concealing overtime hours by crediting the overtime hours of one employee to another employee and by separately paying for overtime with "extra labor vouchers."

with any of respondents "as one who has never violated the law at all." See *International Salt Co.* v. *United States*, 332 U. S. 392, 400. On the contrary it would make of the injunction an idle gesture if "all of the untraveled roads to that end be left open and that only the worn one be closed. The usual ways to the prohibited goal may be blocked against the proven transgressor and the burden put upon him to bring any proper claims for relief to the court's attention" *ibid.*

The reluctance of the courts below to enforce the injunction was apparently predicated on the assumption that this is a punitive proceeding "to inflict punishment" upon respondents (2nd R. 1010). Whatever basis there may be for confusion where the contempt action is mixed or not explicitly identified (cf. *United States* v. *United Mine Workers, supra*, with *Penfield Co.* v. *Securities & Exchange Comm.*, 330 U. S. 585), the action here is purely and simply a civil contempt, is explicitly so designated in the application for contempt (2nd R. 1), and seeks only purely civil remedial relief. The Administrator in this proceeding does not seek to punish or penalize respondents in any way—he seeks only the strictly civil relief that respondents be required to do what the decree and the law make it their duty to do. See *Penfield Co.* v. *Securities*

& Exchange Comm., 330 U. S. 585. Surely such a remedy is not so severe as to exclude its use even in doubtful cases. While there might be some basis for reluctance to punish or penalize respondents for erroneous interpretation of the decree where there is reasonable uncertainty as to the illegality of their practices, there should be no hesitancy about compelling respondents to comply with the decree and to restore any advantages they might have acquired through following their erroneous interpretations since the date of the decree. It imposes no undue "peril of contempt" [16] upon defendants to require them to carry the onus of uncertainty to this extent. "The onus thrown upon the Defendants, who have to comply with the terms of the injunction, is a necessary consequence of their own illegal act * * *." 54 Yale L. Journ. at 146, n. 22.[17]

Can it be considered unfair that an employer who has failed to pay the wages due under the Act with impunity for three years (the original decree was entered here August 29, 1941) is compelled to comply with the law from the date of the injunction decree? Is it unreasonable that an employer who gambles on evading the Act is

[16] See Note in 54 Yale Law Journal 141 at 146.

[17] Quoted from Lord Hatherley, L. C., in *Attorney-General v. Colney Hatch Lunatic Asylum*; L. R. 4 Ch. App. 146, 162 (1868).

not permitted to retain the benefits and advantages accruing from his resolving doubts against compliance, after he has had a trial and been enjoined from violating? Is it reasonable that an erroneous interpretation of their liabilities should be the basis of securing to respondents advantages over competitors who have correctly construed the law and have been complying with it since its effective date?

The appropriate answers to these questions seem clearly indicated in this Court's opinion in *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, where, rejecting the employer's plea that he should not be subjected to the payment of liquidated damages "without opportunity to test the issues [of the applicability of the Act] before the courts," this Court said: "Perplexing as [employer's] problem may have been, the difficulty does not warrant shifting the burden to the employee" (*Id.*, at 582, 583). So in the instant case, whatever doubts respondents may have had do not warrant their retaining the benefits of their noncompliance at the expense of their employees, their competitors, and the public interest. The *Missel* ruling would seem, *a fortiori*, applicable here, since the relief now being sought would require respondents to pay only the basic wages, and not liquidated damages.

III

EFFECTIVE REMEDIAL RELIEF IN A CIVIL CONTEMPT ACTION FOR UNDERPAYMENTS IN VIOLATION OF THE INJUNCTION SHOULD INCLUDE AN ORDER FOR PURGING THE CONTEMPT BY RESTORATION OF SUCH UNDERPAYMENTS

While the appellate court below did not find it necessary to rule on the question of the Administrator's right to the remedy of restitution of wages during the period of contempt, this question will necessarily arise if the decision below is reversed on the other issues. Since the Fifth Circuit has already held that the Administrator has no authority to obtain such restitution in a civil contempt proceeding (*Walling* v. *Crane*, 158 F. 2d 80),[18] and the district court in this case merely followed that ruling, it is appropriate, and we think important, that the question be disposed of by this Court with the other issues in this case, rather than remanded to the Fifth Circuit.

In *Porter* v. *Warner Holding Co.*, 328 U. S. 395, this Court held that the power of the Administrator under the Emergency Price Control Act to bring proceedings in equity for the enforcement

[18] This case is now pending before the Court of Appeals for the second time on issues similar to those here presented. See 7 W. H. Cases 599, now pending before the Court of Appeals for the Fifth Circuit, No. 12,335.

of that statute included the power to compel restitution of overcharges to customers. The reasoning of this opinion seems applicable to the Fair Labor Standards Act as well. Cf. *Walling* v. *O'Grady*, 146 F. 2d 422 (C. C. A. 2), and *McComb* v. *Scerbo & Sons* (S. D. N. Y.) decided October 13, 1948, 8 W. H. Cases 304, under the Fair Labor Standards Act.[19] But whether or not in an original injunction proceeding the Administrator is entitled to seek restitution of wages previously

[19] The decision in *Porter* v. *Warner Holding Co.*, 328 U. S. 395, rested on the premise that the statutory injunction remedy invokes the full equity jurisdiction of the courts, including specifically jurisdiction to order restoration of "the status quo" and "the return of that which rightfully belongs" to the person harmed by the illegal conduct. See 328 U. S. at 398, 402. "Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. * * * Nothing is more clearly a part of the subject matter of a suit for an injunction than the recovery of that which has been illegally acquired and which has given rise to the necessity for injunctive relief." (*Id.* at 398–399.) "Such action is within the recognized power and within the highest tradition of a court of equity" (*id.* at 402).

Similarly, the statutory authority in Section 17 of the Fair Labor Standards Act "to restrain violations" invoked the same broad equitable jurisdiction. *Walling* v. *O'Grady*, 146 F. 2d 422 (C. C. A. 2), and *McComb* v. *Scerbo & Sons*, 8

withheld, we think it clear that after issuance of an injunction a court may and should order payment of amounts subsequently not paid employees in violation of the injunction. For this is merely to require compliance with the injunction which the statute authorizes, not to give the Administrator a different remedy under the statute. It has been the usual practice of the courts throughout the country to order restitution for violation of injunctions in civil contempt actions under the Fair Labor Standards Act, and no question as to

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W. H. Cases 304 (S. D. N. Y.). "We can see little difference between giving reparation to an employee for loss of wages as ancillary to injunctive relief * * * and giving back pay where an injunction for reinstatement has been violated [citing *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, and *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177]. In each case such reparation is necessary to restore the status quo interfered with by the unlawful conduct of the employer and in neither case is there a statutory mandate spelling out all the details of relief necessary for the purpose in hand." 146 F. 2d at 423. See also *Walling* v. *Miller*, 138 F. 2d 629 (C. C. A. 8), certiorari denied, 321 U. S. 785, *Fleming* v. *Warshawsky & Co.*, 123 F. 2d 622 (C. C. A. 7), and *Fleming* v. *Alderman*, 51 F. Supp. 800 (D. Conn.), which required restitution under consent decrees. In the *Alderman* case the district court refused to "view itself for purposes of the statutory proceedings as shorn of its general equitable jurisdiction," pointing out that "Section 17 authorizes injunctions to restrain 'violations' * * * it contains no language which limits its effect to violations with respect to wages earned thereafter" (at 801).

the propriety of this practice has been raised outside of the Fifth Circuit.[20]

This practice is not only supported *a fortiori* by the reasoning of the *Warner* decision, but would seem to be a necessary part of "the full remedial relief" to which the Government, like

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[20] For example, see *Fleming* v. *Knox*, 42 F. Supp. 948 (S. D. Ga.); *Jacobs* v. *W. B. Coppersmith & Sons*, 1 W. H. Cases 922 (E. D. N. C.); *Walling* v. *Jersey Footwear*, 6 W. H. Cases 552 (D. N. J., 1946); *McComb* v. *Frank Viliari d/b/a Mayaguez Embroidery Co.* (D. P. R.), Civil Action No. 2434, September 12, 1947; *Walling* v. *Empire Steamship Service Corp.* (S. D. N. Y.), Civil Action No. 21–168, May 16, 1947; *Walling* v. *W. H. Gale* (E. D. Va.), Civil Action No. 189, July 15, 1946; *Walling* v. *Charles Bihler* (D. N. J.), Civil Action No. 1276, March 28, 1946; *Walling* v. *Sam Schweitzer et al.* (D. P. R.), Civil Action No. 527, March 6, 1946; *Walling* v. *G. & M. Cloak Co.* (E. D. N. Y.), Civil Action No. 26–13, August 6, 1945; *Fleming* v. *G. A. Mercurio Co.* (D. R. I.), Civil Action No. 397, February 12, 1945; *Fleming* v. *Ruth Merzon* (S. D. N. Y.), Civil Action No. 10–77, November 15, 1944; *Fleming* v. *Metro Sportswear, Inc.* (S. D. N. Y.), Civil Action No. 15–143, February 24, 1944; *Fleming* v. *Goldsmith Co.* (D. P. R.), Civil Action No. 686, August 14, 1943; *Walling* v. *Malcolm Kenneth Co.* (D. Mass.), Civil Action No. 1217, March 5, 1943; *Fleming* v. *Daniel Nadal* (D. P. R.), Civil Action No. 527, November 14, 1941; *Fleming* v. *McAdoo* (W. D. Tenn.), Civil Action No. 76, January 20, 1941; *Andres* v. *Sports-Wear Hosiery Mills, Inc.* (E. D. Pa.), Civil Action No. 217, May 25, 1940; see also *Walling* v. *M. Glasgall Silk Co. & Morris Glasgall* (D. N. J.), Civil Action No. 1256, April 14, 1947, where upon proof of payment of restitution plus liquidated damages, the court dismissed the contempt action. Although these cases involved consent decrees, the power of the Court to order restitution for violation occurring after entry of the decree would be the same whether the decree was entered by consent or after contest.

other suitors, is entitled to compel compliance with a judgment in a civil contempt action. *Penfield Co.* v. *Securities & Exchange Comm.*, 330 U. S. 585 at 592; *United States* v. *United Mine Workers*, 330 U. S. 258; *Leman* v. *Krentler-Arnold Co.*, 284 U. S. 448; *Union Tool Co.* v. *Wilson*, 259 U. S. 107; see also *Maggio* v. *Zeitz*, 333 U. S. 56 at 67–68;[21] *Parker* v. *United States*, 153 F. 2d 66 (C. C. A. 1); cf. *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 327. Such relief would necessarily include the payment of the wages which the judgment had made it respondents' duty to pay. See *Union Tool Co.* v. *Wilson*, *supra* and *Leman* v. *Krentler-Arnold Co.*, *supra*. Any relief less than that would put a premium on violation. "Otherwise, there would be reward from * * * [violation] through retention of its fruits." See *United States* v. *Paramount Pictures*, 334 U. S. 131, 171. See also *Schine Chain Theatres* v. *United States*, 334 U. S. 110: "To require divestiture of * * * [benefits] unlawfully ac-

[21] While the Court held in the *Maggio* case that the coercive sanction should not be imposed where it appears that the bankrupt is presently unable to comply with the turnover order, there has been no suggestion in the instant case, as pointed out, *infra*, pp. 53–54, that the contemnors will be unable to comply with the wage requirements of the injunction. See also *Parker* v. *United States*, 153 F. 2d 66, 70 (C. C. A. 1), recognizing that a coercive sanction may not be enforced to the extent of confining a contemnor who "shows his utter inability" to pay the compensatory fine, or to comply with the court's orders.

quired is not to add to the penalties that Congress has provided * * *. Like restitution it merely deprives a defendant of the gains from his wrongful conduct" (at p. 128).

The decision in *Parker* v. *United States, supra,* holding that denial of the remedy of restitution would be an abuse of discretion, seems equally applicable to the closely parallel situation here. In holding that the Government, upon proof of underpayments in violation of an injunction requiring compliance with a Federal milk marketing order, was "entitled as of right" to the imposition of a compensatory fine equal to the underpayments, the Court of Appeals for the First Circuit said:

> If complainant makes a showing that respondent has disobeyed a decree in complainant's favor and that damages have resulted to complainant thereby, complainant is entitled *as of right* to an order in civil contempt imposing a compensatory fine. *Union Tool Co.* v. *Wilson,* 1922, 259 U. S. 107, 42 S. Ct. 427, 66 L. Ed. 848; *Enoch Morgan's Sons Co.* v. *Gibson,* 8 Cir., 1903, 122 F. 420, 423; *L. E. Waterman Co.* v. *Standard Drug Co.,* 6 Cir., 1913, 202 F. 167. *The court has no discretion to withhold the appropriate remedial order.* In this respect the situation is unlike that of criminal contempt where the court in its discretion may withhold punishment for the past act of disobedience. An order impos-

> ing a compensatory fine in a civil contempt proceeding is thus somewhat analogous to a tort judgment for damages caused by wrongful conduct [Italics supplied].

The analogy to the instant case is particularly noteworthy since the "compensatory fine" ordered in the *Parker* case was not to be retained by the Administrator but was to be turned over by him to various milk dealers and producers in order to effectuate the statutory equalization scheme. See *Green Valley Creamery, Inc.* v. *United States*, 108 F. 2d 342, 344 (C. C. A. 1). Further, the compensatory fine levied in the *Parker* case not only included underpayments due when the injunction was issued but also underpayments due subsequent to its issuance. See *Parker* v. *United States*, 126 F. 2d 370, 374, 380. This is significant in view of the Fifth Circuit's assumption that restitution could not be ordered "in unascertainable amounts" to persons not named in the decree. See *Crane* opinion, 158 F. 2d at 84. But compare *Texas & N. O. R. Co.* v. *Brotherhood of Railway & Steamship Clerks*, 33 F. 2d 13, 16 (C. C. A. 5), affirmed, 281 U. S. 548, where the Fifth Circuit itself upheld an order compelling the contemnor to restore back wages to railroad employees wrongfully discharged in violation of an injunction although the injunction did not specify "any particular amounts due any individual" or "designate particular employees * * * and the amounts

to be paid them" (see district court opinion in *Crane* case, after remand, 7 W. H. Cases 599–600). Obviously the absence from the decree of the names of the employees and the specific amounts due them is no reason for refusing restitution. "The decree does not appear too indefinite to support such an order, for, exactness of amounts and employees' names is impossible in any decree which operates in *futuro.*" See Note (1947), 60 Harv. L. Rev. 470, 471.

This Court's decisions confirm the ruling of the *Parker* case that the discretion of the court in the event it finds civil contempt is a discretion as to what measure will effectively compel compliance, and not a discretion to choose some lesser relief.[22] See *Penfield, United Mine Workers* and *Union Tool* decisions *supra.* While "there may be occasion for the exercise of judicial discretion * * * the order to be entered in such a proceeding is not exclusively or necessarily a discretionary one. * * * Moreover, legal discretion in such a case does not extend to a refusal to apply well-settled principles of law to a conceded state of facts." *Union Tool Co.* v. *Wilson,* 259 U. S. 107 at 112. In other words, the court is not free

[22] See the review of the *Penfield* case in 59 Harvard L. Rev. 1311 (1946), pointing out that the case limits "the discretionary powers of the trial court in holding that where the order which is disobeyed is in aid of a statute representing a strong public policy, a mere penalty may be inadequate."

to refuse the relief necessary to effect compliance with the injunction.

The suggestion in the opinion below that an order for payment of unpaid wages to purge the contempt might conflict with the employees' right to recover under Section 16 (b) of the Act (2nd R. 1125) overlooks the purposes and supplementary character of these two distinct remedies. Although employees have a private right to their wages and to be made whole by way of liquidated damages for underpayments, the Administrator has an independent interest—on behalf of the public—in compelling the payment of the statutory wages. Congress, apparently recognizing that the public interest and the interests of complying competitors could not be adequately protected simply by giving individual employees the right to sue, provided the supplementary remedy of injunction. The purpose of the injunctive remedy obviously is to secure, short of criminal prosecution, some more uniform and more reliable enforcement than could be afforded by sporadic individual employee suits.

As Congress evidently anticipated, the employee remedy, although important as an ancillary aid in enforcing the Act and in enabling individual employees to secure redress, is inadequate to secure the uniform enforcement which is essential for this type of legislation.

The order for payment of unpaid wages as a purging of contempt thus serves a purpose not in conflict with, but supplementary to, the employee's right to sue for his wages. Such a remedy as a means of enforcing an injunction can more effectively accomplish the broader public purposes, because it is not dependent upon the whim or comparative initiative or fears of individual employees. "The Administrator acts in the public interest—the purchaser in his own. The remedies are not irreconcilable. There are undoubtedly many instances where the relationship of buyer and seller is such that the buyer is deterred from vindicating his own and therefore also the public right." See *Bowles* v. *Skaggs*, 151 F. 2d 817, 821 (C. C. A. 6).

Congress was well aware that employees might be reluctant to assert their rights and that in some instances they might be intimidated. To limit the means of requiring the employer to pay the statutory amounts strictly to individual employee suits is to exclude resort to this most effective remedy in cases where it is most needed, that is, where employees are too weak, too ignorant or too intimidated to assert their rights. Even where employees feel free to bring suit, it is well known that the successful prosecution of such suits is beset with obstacles that would discourage even litigants not subject to the risks of antagonizing their employer. See 43 Columbia L. Rev., p. 355, for a comprehensive dis-

cussion of the difficulties of proof in employee suits under Section 16 (b).

Thus, it is evident as a practical matter that the employees' remedy under Section 16 (b) cannot take the place of, and affords no reasonable ground for denying the usual equitable relief incident to the enforcement of an injunction. As this Court said in *Porter* v. *Warner Holding Co.*, 328 U. S. 395, when the Administrator seeks restitution he is simply asking "the court to act in the public interest by restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant. Such action is within the recognized power and within the highest tradition of a court of equity" and "is plainly unaffected by the provisions of Section 205 (e)," giving an aggrieved purchaser or tenant the right to sue for damages on his own behalf. There was no indication, continued the Court, that the private right to sue "was intended to whittle down the equitable jurisdiction * * * so as to preclude a suit for restitution." 328 U. S. at 402, n. 5.

The purging of contempt by requiring payment of the amounts unlawfully withheld also serves the public interest in having the statutory wage requirements uniformly enforced, so that the employer whose employees may be lax in asserting their claims may not thereby secure an unfair advantage over competitors whose employees in-

sist upon their rights. The hit or miss prosecution of employee suits is obviously inadequate to enforce the public policy of the Act that "interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions." *United States* v. *Darby*, 312 U. S. 100, 115. To carry out this public responsibility Congress has provided the injunctive remedy, which implies the right of the Administrator on behalf of the Government "to benefit from orders entered in its behalf" through "the civil remedies enjoyed by other litigants" (see *United Mine Workers* opinion, 330 U. S. at 302). With respect to a similar statutory injunction remedy, this Court has said that its comprehensiveness "is not to be denied or limited" by implication. "Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." See *Porter* v. *Warner Holding Co.*, 328 U. S. at 398. It therefore takes an unreasonably restrictive view of the injunctive remedy to exclude "the most appropriate method of coercing the employer's compliance, which is clearly to measure the fine by the [unpaid] wages." See 60 Harvard L. Rev. 470, 471 (1947).

Equally untenable is the suggestion (see the Fifth Circuit's opinion in the *Crane* case) that a

reparation order might result in "imprisonment * * *. as the means for the collection of a debt" (158 F. 2d 80, 85). It is well settled that contempt proceedings may be employed for coercing payment of alimony (see *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 442; *Maggio* v. *Zeitz*, 333 U. S. at 74, fn. 7), restitution of back pay under the National Labor Relations Act (cf. *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177, 194), or the refund of overcharges under Section 205 (e) of the Emergency Price Control Act (see *Porter* v. *Warner Holding Co.*, 328 U. S. 395, 396). In each of these situations, fine and imprisonment are potential means for "collection of a debt." See also *Fox* v. *Capital Co.*, 299 U. S. 105, 108. Similarly in the *Parker* case (see *supra*, n. 20, p. 45), the court fully appreciated the fact that contempt might have subjected defendant to "imprisonment * * * as the means for the collection of the debt." The potentiality for "imprisonment for debt" in these cases does not mean that a person financially unable to pay will be imprisoned for debt. Both the *Maggio* and the *Parker* cases, *supra*, make it clear that there are protective limitations which assure that this remedy will be relied upon only to the extent that it can actually serve the civil function of effecting compliance.

It has not been suggested that the contemnors in the instant case will be financially unable to pay the wages in question, and there is no threat

of imprisonment for debt unless they refuse to comply with the court's order in contempt. In other words, contemnors "carry the keys of their prison in their own pockets." *In re Nevitt*, 117 Fed. 448, 461 (C. C. A. 8), cited with approval in the *Penfield* case, 330 U.S. at 590 and in *Maggio* v. *Zeitz*, 333 U. S. 56, 67–68. The potentiality of imprisonment for debt in this sense exists in every civil contempt where a coercive fine is imposed, but any imprisonment imposed would be not for debt but for refusal of contemnor to comply with the court's order. Unlike a criminal contempt proceeding, the purpose of the present action is not to punish but to coerce defendants into doing that which the decree and the law make it their duty to do.

CONCLUSION

The decision below should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 110.

WILLIAM R. McCOMB, Administrator of the Wage and Hour Division, United States Department of Labor,
Petitioner,

v.

JACKSONVILLE PAPER COMPANY, ET AL.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

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The Respondents will be referred to herein as such or as the Employer and the Petitioner will be referred to as the Administrator.

STATEMENT OF THE CASE.

The Administrator's statement, it seems to us, erroneously throws an atmosphere of willful violations and express disregard of the injunction around the entire appeal. For instance, at pages 6 and 7 of the Petition, the statement

is made that false records were kept with regard to employees whose overtime hours were credited to other employees. The testimony referred to in support of this contention was that the practice was engaged in by a foreman to help his fellow workmen and that this was not only without knowledge of the Employer but against his express orders. (1st R. 197). So with reference to the accumulated hour plan (page 6 of the Petition), while the language quoted was used by the District Court, it is also apparent from the context of the Court's opinion that it paraphrased language used by this Court, in other decisions dealing with such plans for in no sense was there any concealment or falsification of records. On the contrary, the plan was thought to be in accordance with the decision of this Court in *Walling* v. *Belo Corporation*, 316 U.S. 624, and Par. 53 of Interpretive Bulletin No. 4 of the Wage and Hour Administration dealing with the so-called "prepayment plan". The practice with reference to extra labor vouchers referred to on page 6 of the Petition as well as other practices complained of occurred prior to the institution of the original suit in 1940, i.e., during the early days of the Act when there was much confusion and misunderstanding on the part of employers as to its scope and applicability. At any rate, what may have occurred prior to the entry of the Amended Judgment of June, 1943 can hardly have any bearing on the present proceedings especially as the use of extra labor vouchers, the alleged concealment of overtime and the matter of payment of overtime to piece-workers is not involved in the present proceeding. As to piece-workers, the only controversy in the present proceeding involves two employees, one of whom was in sole charge of a separate department and claimed to be exempt—we think with good reason—as an executive-administrative employee. (2nd R. 241). At any rate the District Court pointed out that all the practices now challenged, save the bonus plan, were in existence when the Judgment was entered but none of them were specifically enjoined, and said (2nd R. 1010),

> "All the questions are of such nature and character that defendants are entitled to their day in Court for adjudication of the questions. The parties attempted to secure an adjudication of some of the questions at the former trial but the Court restricted the issues and refused to hear evidence on the questions."

Furthermore the Final Judgment (2nd R. 1013) expressly finds that the violations were not willful.

BRIEF AND ARGUMENT.

The sole purpose of the Administrator is to seek an adjudication by this Court of his right to compel payment of amounts claimed by him to be due under the Act. Congress did not confer such authority upon him. On the contrary, the Statute provides that the employer shall be liable to the employee for such compensation and in an additional equal amount as liquidated damages and continues, (29 U.S.C. Sec. 216)

> "Action to recover such liability may be maintained in any Court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. . . . ."

Having so prescribed the form of the remedy, it will be held to be exclusive, *Walling* v. *Miller*, 138 Fed. (2d) 629, 632.

In addition to this remedy for the recovery of wages due conferred upon the employees the Act also affords to the Administrator a remedy by injunction, or by criminal proceedings where the violation is willful.

There is a very good practical reason why Congress refused to give the Administrator the right to couple an action for wages alleged to be due with proceedings to enjoin violations of the Act. By their very nature such proceedings in the name of the Administrator involve practices affecting numerous employees as a class; the right to recover compensation on the other hand is an individual right

which must be determined by the status of the particular employee and not by the activities of the employer. *Kirschbaum Co.* v. *Walling*, 316 U.S. 517; *Walling* v. *Jacksonville Paper Company*, 317 U.S. 564. Furthermore, the right to to recover requires a determination that the employee during a given work-week devoted a substantial amount of his time to interstate activities. Therefore, it would be necessary in order to adjudicate the amounts due each employee in a situation such as this, to adduce testimony with reference to the duties of each employee, thus unduly burdening the Court with matters not directly involved in the enforcement of the Act and which can more expeditiously be determined in an action brought by the employee individually or on behalf of other employees similarly situated.

While a number of Courts have held that indemnity to the injured party for loss occasioned by the violation of an injunction can only be secured in a civil suit, it is now the general rule, in order to avoid a multiplicity of suits, that fines by way of indemnity to the injured party may be imposed in the equity case, but such fines must not exceed the actual loss to the complainant. *Parker* v. *U. S.*, 153 Fed. (2d) 66; *Christensen Engineering Co.* v. *Westinghouse Air Brake Co.*, 135 Fed. 774; *Eustace* v. *Lynch*, 80 Fed. (2d) 652. This Court has said in *U. S.* v. *United Mine Workers*, 330 U.S. 258, at page 304,

> "Where compensation is extended (in a civil contempt proceeding), a fine is imposed payable to the complainant. Such fine *must, of course, be based upon evidence of complainant's actual loss*," etc.

There is no evidence in the record that the Administrator has sustained a loss in this proceeding. He alone is the complainant and the employees are not parties to the suit. The question arises whether a judgment requiring payment of an amount found by the Court to be due would bar the employees from bringing an independent action, if they should so elect, to recover an additional equal amount as liquidated damages.

The cases cited by the Administrator can readily be distinguished from the case at bar—for instance, the Emergency Price Control Act involved in *Porter* v. *Warner Holding Company*, 328 U.S. 395, expressly authorizes the Administrator to collect the penalty prescribed by the Act under certain circumstances and in *Penfield Co.* v. *Securities and Exchange Commission*, 330 U.S. 585, the Statute expressly authorized the Commission to require the production of records and the fine imposed by the Court in lieu of requiring such production did not enable the Commission to carry out its statutory function, whereas here if the Administrator feels that a defendant is deliberately trifling with the Court and flouting the Act, he can cause criminal proceedings to be instituted. Nor can there be any doubt that under such circumstances the District Court would not hesitate to impose severe penalties for deliberate violations of its injunction orders.

The Administrator has cited a large number of cases in which a consent decree was entered requiring the payment of back wages. These cases, of course, are not authority on the question for, having been consented to, the award of compensation could not thereafter be questioned by the defendant. The error, if any, not being jurisdictional, was waived by the consent. *Flemming* v. *Warshawsky*, 123 Fed. (2d) 622.

We, therefore, respectfully submit that the Circuit Court of Appeals for the Fifth Circuit reached a correct conclusion in *Walling* v. *Crane*, 158 Fed. (2d) 80, and that the Petition for Certiorari should be denied.

Respectfully submitted,

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 110

WILLIAM R. McCOMB, Administrator of the Wage and Hour Division, United States Department of Labor,
Petitioner,

v.

JACKSONVILLE PAPER COMPANY, ET AL.

SUPPLEMENTAL BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

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SUPPLEMENTAL BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

In addition to the reasons urged in the Brief for Respondents filed herein, Respondents now present for the consideration of the Court the following facts transpiring after the printing of the brief herein as an additional reason why certiorari should not be granted in this case:

Section 350 U. S. C. limits the time within which certiorari may be allowed to three months after the entry of the judgment to be reviewed, but provides that for good cause shown this period may be extended not exceeding sixty days by a Justice of the Supreme Court.

The judgment of the Circuit Court of Appeals was entered March 23, 1948 (2nd R. 1125). The Petition for Certiorari was filed on June 21, 1948, and notice of the Petition was not received by Respondents until after the time for filing a Cross-Petition had expired but within the sixty

day extension which the Statute permits. Within said sixty day period, i. e., on July 21, 1948, Respondents transmitted to the Clerk of this Court a Motion for Extension of Time within which to file a Cross-Petition for Certiorari and Respondents were advised by the Clerk of this Honorable Court on July 26, 1948, that said Petition was presented to Mr. Justice Black and on that day endorsed "Denied because application for extension presented too late".

It appears, therefore, that in the event the Petition for Certiorari is granted, Respondents may not be permitted to urge in this Court that the Circuit Court of Appeals erred in affirming the Lower Court on the points raised by Respondents, one of the most important being the finding that a bonus paid at the end of the year must be considered in determining the regular rate of pay during the succeeding year, for the purpose of computing overtime compensation.

As the Circuit Court of Appeals declined to require Respondents to pay the additional compensation which Petitioner contends should have been adjudged as a matter of right, Respondents did not seek a review by this Court but it is manifest that if a review is granted at the instance of the Petitioner, a full and just determination cannot be made without determining also whether the judgment of the Circuit Court of Appeals on the merits is correct. As Respondents' Petition for Extension of Time was denied, it is our understanding that these important points cannot be raised in this Honorable Court. (*Morley Construction Company* v. *Maryland Casualty Company*, 300 U. S. 185). Hence, we respectfully urge that this is a compelling reason why the Petition for Certiorari should be denied.

Respectfully submitted,

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Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF ON BEHALF OF RESPONDENTS.

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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF ON BEHALF OF RESPONDENTS.

QUESTIONS PRESENTED.

We do not believe that the questions stated by the Petitioner accurately state the issues before this Court for determination. In our view the question should be stated as follows:

1. Where none of the practices complained of in an application for adjudication in civil contempt were specifically enjoined and where both the District Court and the Circuit Court of Appeals found that these practices were of such a nature as to entitle the Respondents to their day in Court, that the Respondents were not in contempt and hence dismissed the rule to show cause and broadened the injunction, is the Petitioner entitled as a matter of law to a judgment directing payment of back wages claimed to be due to Respondents' employees.

STATEMENT OF THE CASE.

We submit that the recitals in the statement of Petitioner dealing with matters arising prior to the original judgment of the District Court have no proper place in this proceeding. Furthermore, the conclusions drawn do not distinguish between the corporate Respondent Jacksonville Paper Company and the Respondent co-partnership Southern Industries Company, but do attempt to cast upon the Respondents an atmosphere of intentional wrong-doing which the facts do not warrant. The reference to piece-workers, concealment of overtime hours and payment of employees by extra labor vouchers at pages 5 and 6 of Petitioner's brief all relate to the Respondent Southern Industries Company. Only the so-called accumulated hours plan, Petitioner's brief page 7, relates to the Respondent Jacksonville Paper Company. The record clearly refutes any imputation of bad faith with reference to the so-called concealment of overtime hours. The testimony referred to by Petitioner is that of his own Inspector, Mr. Thomas, who stated that when these matters were called to the attention of some of the defendants "they expressed surprise that such things had been found", and made an appointment for a conference (1st R. 181). At that conference the foreman in charge of the department told Mr. Thomas, "It was all my fault. The company did not have a thing to do with it." (1st R. 182). Further information given Mr. Thomas

by this foreman clearly establishes that the foreman was trying to favor some of the men under him by letting them work overtime contrary to the orders of the company (1st R. 197). The same lack of knowledge by the management existed with reference to the extra labor vouchers. Inspector Thomas testified that when he brought this matter to the attention of the management, "Mr. McGehee expressed surprise at it," (1st R. 189).

The accumulated hours plan was incidentally touched upon in the original trial but the injunction was silent as to it "and it failed to find or forbid specifically any practice now in controversy". See opinion of the Circuit Court of Appeals (2nd R. 1122). As pointed out by the District Court (2nd R. 994) the first trial of this case centered around the controversy as to what extent the defendants were subject to the Act, (2nd R. 994), it having been the Administrator's primary contention that the receipt of extra-state goods was alone sufficient to place all employees within the Act.

As to Subdivision B of Petitioner's statement, the District Court found that the Respondents had violated the provisions of the Act in the following particulars:

(a) The use of the accumulated hours plan, as to which he said "At the time the accumulated hours plan was put into effect, it was believed by the defendants to fully comply with the decisions of the Supreme Court of the United States in *Walling* v. *A. H. Belo Corporation*", (2nd R. 1000). Therefore, the language quoted in Petitioner's brief that the plan was "completely false and fictitious", used by the District Court on the following page, when construed in its context, necessarily refers to the legal effect as tested by the subsequent opinions of this Court in which the *Belo* case was distinguished and not as a fraudulent scheme to evade the law.

(b) In failing to treat the annual bonus paid to employees on a fixed percentage of their total earnings during the

prior year, including overtime, as a part of the regular rate of pay during the succeeding year. This bonus was not dependent upon the efforts of the individual but was authorized paid by the Board of Directors annually to all employees having the requisite length of service with the company, regardless of their efficiency or incompetence.

(c) Misclassification of executive and administrative employees. As to some of these the Circuit Court of Appeals said it was a close question but as the District Court was not clearly in error, it would not reverse (2nd R. 1123).

(d) Failure to pay overtime to two piece-rate workers of Southern Industries Company, one of whom was in charge of a separate department and claimed to be exempt as an executive employee.

Notwithstanding all of the inferences of deliberate violation sought to be drawn by the Petitioner, the fact remains that both the District Court and the Circuit Court of Appeals found that the Respondents acted in good faith in seeking a judicial determination of the questions involved.

SUMMARY OF ARGUMENT.

1. Taking up first the summary of Petitioner's argument, commencing page 13 of his brief, it is replete with statements that the practices now complained of were known by the Respondents to be illegal and claimed to be so when the injunction was issued. This is contrary to the finding of the District Court and contrary to the facts. As stated by the Circuit Court of Appeals, "The decree was in general complied with and complaint is now made only as to a few employees affected by these particular practices". (2nd R. 1124). That Court also pointed out that the Administrator waited three years to complain of them. That and other similar expressions contained in the opinions of both the District Court and the Circuit Court of Appeals show that there is no justification for the attempt to brand the Respondents as willful violators of the Act and of the injunc-

tion. No doubt, if such had been the case, the District Court would have been prompt to uphold its dignity by imposing appropriate penalties, rather than dismissing the rule to show cause and treating the proceeding as an application for a broadening of the injunction to cover the practices now for the first time specifically complained of by the Administrator. This is not a case where plain provisions, such as the payment of minimum wages, the keeping of records or the payment of time and a half for excess hours on what the parties considered the regular rate of pay, were claimed to have been violated, but in each instance involves questions on which there can well be a bona fide difference of opinion, as both the lower courts held.

2. The Respondents on the other hand contend:

(a) That Congress has expressly conferred the right to sue for back wages upon the employees affected and their representatives and by doing so, has denied the right of the Administrator to seek such relief, so that he cannot accomplish by indirection what the Act precludes him from doing directly. The Administrator has recognized this limitation upon his powers, for among his first recommendations for further legislation, in his Annual Report to Congress of January 1, 1945,[1] he asks that such a provision be added to the Act coupled, however, with a safeguard to employers by way of waiver of the double liability provision contained in Section 16(b). Similar recommendations are embodied in each subsequent report, including that for the fiscal year 1947, in which he says at page 9,

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[1] "The labor laws of several states give the administrative agency in charge of the enforcement of their minimum wage laws power to sue directly to secure the restitution of unpaid wages to the employees upon assignment of their claims. If such a provision were added to Section 16(b) of the Fair Labor Standards Act, it would increase the efficiency of enforcement and facilitate the collection of restitution."

"The Administrator is not empowered to order restitution of back wages owed under the Fair Labor Standards Act."

Annual Report, Wage and Hour Division, January 1, 1945, page 7.

See also, Annual Report, November 1, 1945, page 1; Annual Report, January 2, 1947, pages 64 and 65, renewing the recommendation with the further limitation that the right be granted to sue upon request of employees to whom such wages are due.)

(b) That the statute creates a right of action for back wages and confers a remedy upon the employees affected, which remedy is exclusive and does not authorize a court of equity to enlarge the same by requiring restitution at the suit of the Administrator, particularly as Section 17 of the Act dealing with injunction proceedings gives to District Courts jurisdiction "to restrain violations of Section 15" and no more.

(c) That the right to require restitution, if authorized under the language of the statute, is not mandatory, but rests in the sound discretion of the Court, to be granted or denied as the circumstances of the case may require.

(d) That the jurisdiction of courts of equity in civil contempt proceedings to award damages in appropriate cases for violation of injunction orders stems from the principle that equity, having assumed jurisdiction, will do complete justice between the parties and not require a separate suit at law for the damage caused by such violation, so that the relief given is limited to the damages sustained by the plaintiff, for which he could maintain a separate suit at law, and does not justify an award to a plaintiff for damages sustained by others for which they have a separate and independent remedy, especially if that remedy is not completely barred by the decree of the equity court, as would be the case here, for the employees could still, if they desire, sue for liquidated damages.

ARGUMENT.

1. The Administrator is Without Authority to Sue for Back Wages.

In the adoption of the Fair Labor Standards Act Congress provided in great detail the machinery for its enforcement. By Section 4(b), attorneys appointed by the Administrator may appear for and represent the Administrator in any litigation, but all such litigation is subject to the direction and control of the Attorney General. Section 11(a) provides that with the exception of violations of the child labor provisions, the Administrator shall bring all actions under Section 17 to restrain violations of this Act. By Section 16(a) criminal penalties are provided for intentional violations and by Section 16(b), liability is imposed upon the employer for failure to pay wages in accordance with the provisions of the Act, but it is expressly provided that such liability shall be to the employee or employees affected and that the action to recover such liability may be maintained, "by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated". It is to be noted that the fact that the liability is to the employees is stated not less than three times in this short paragraph of the Act. Injunction proceedings on the other hand are expressly provided for in Section 17 giving to District Courts of the United States jurisdiction "to restrain violations of Section 15" and no more. This powerful battery of weapons does not call for reinforcement with armor not provided in the Act", as said Mr. Justice Rutledge in the *Warner Holding Company* case. We have already adverted to the recommendations to Congress made by the Administrator in his reports commencing with that of January 1, 1945. Numerous amendments have from time to time been

introduced,[2] and it is significant that Congress did not see fit to adopt the Administrator's recommendations in that behalf. On the contrary, Section 16(b) of the Fair Labor Standards Act was amended by Section 5 of the Portal to Portal Act of 1947 (Public Law 49, 80th Congress), by eliminating the right of employees to designate an agent to maintain the suit and providing that no employee shall be a party plaintiff to any such action unless his consent in writing is filed in the Court in which such action is brought. It, therefore, appears that Congress has restricted the right of action to recover back wages, rather than to enlarge it as requested by the Administrator. The Circuit Court of Appeals for the Fifth Circuit has held that the Administrator cannot, in the guise of a compensatory fine, obtain a remedy which the Act gives only to the employees. *Walling* v. *Crane*, 158 Fed. (2d) 80. On remand, the District Court awarded an amount as compensation for the loss sustained by the Administrator, 14 Labor Cases 64,527, and the case is now again before the Circuit Court of Appeals, having recently been argued.

2. The Remedy Conferred Upon Employees to Sue for Back Wages is Exclusive.

As pointed out above, Section 16(b) of the Act creates a liability in favor of the employees, and the employees only, to recover amounts due for violation of the minimum wage and maximum hour provisions. Where a statute creates a right and provides a remedy, that remedy is exclusive.

50 A. J. Title Statutes, page 593

Globe Newspaper Company v. *Walker*, 210 U. S. 365

Wilder Mfg. Co. v. *Corn Products Refining Co.*, 236 U. S. 165

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[2] See for instance, the First Annual Report of the Administrator, page 160, the Report of January 28, 1942, page XI, and the Report of January 2, 1947, page 88.

While in the case of *Porter v. Warner Holding Co.*, 328 U. S. 395, this Court held that in the exercise of its inherent equitable jurisdiction, the District Court might have required restitution, it must be borne in mind that the statute there under consideration, i.e., Section 205(a) of the Emergency Price Control Act, 50 U. S. C. A. Appendix, Paragraph 925, is materially different, in that the Price Administrator is empowered not only to enjoin violations of the Act, but to apply to the Court "for an order enforcing compliance with such provisions and upon a showing by the Administrator . . . a permanent or temporary injunction, restraining order or *other order* shall be granted without bond." The Fair Labor Standards Act does not contain so broad a provision, but limits the jurisdiction of the District Courts in injunction proceedings "to restrain violations of Section 15". The words "other order" were stressed in the opinion of this Court in the Warner Holding Company case. Furthermore, in that case, both the District Court and the Circuit Court of Appeals held that there was no jurisdiction under the statute to order restitution. It was that holding of lack of jurisdiction which brought about the reversal of the case and its remand so that the lower Court might exercise its discretion. Therefore, even if this Court should disagree with our contention as to lack of jurisdiction, nothing in the opinion of that case sustains the contention of the Petitioner that restitution must be ordered in the instant proceeding as a matter of right. In the present case the District Court did not hold that it lacked jurisdiction but that there was no evidence which would justify the infliction of a penalty measured by the amount of unpaid statutory wages (2nd R. 1101), and the Circuit Court of Appeals in its order of affirmance, reserved the right to the Administrator to apply to the District Court for a further order requiring retroactive reparation as an incident of the decree of restraint, without, however, expressing an opinion as to his right to such relief.

Likewise in *Bowles* v. *Skaggs*, 151 Fed. (2d) 817, the Circuit Court of Appeals for the Sixth Circuit pointed out that the words "other order" in the Emergency Price Control Act authorized the Court to exercise normal equity jurisdiction, but also held that the Court was not compelled to grant restitution, saying:

> "By our view that the court was empowered to exercise normal equity discretion in fashioning its remedy, we do not intend to suggest that the court is compelled to grant restitution. No discretion was here exercised. The court concluded it had no jurisdiction to entertain the petition. So deciding, the matter was rightly at an end."

In *Creedon* v. *Randolph*, 165 Fed. (2d) 918, the Court also dealt with the Price Control Act. That was a suit by the Price Administrator to require repayment of a rent overcharge, which was dismissed because the District Court found there was no legal basis for the exercise of its jurisdiction. The Circuit Court of Appeals held that jurisdiction existed and remanded the case for further proceedings. Inferentially, at least, the language of the Circuit Court of Appeals in *Walling* v. *Miller*, 138 Fed. (2d) 629, supports the contention that the Administrator lacks authority to compel restitution. That case involved a consent decree based on a stipulation agreeing to pay back wages. On motion to vacate that portion of the decree awarding restitution, the District Court held that the Act did not authorize such relief and that the Court lacked jurisdiction to grant it, hence vacated so much of the decree as ordered restitution. The Circuit Court of Appeals held that the inclusion of restitution went only to the merits, not to the jurisdiction or power of the Court, and said at page 632:

> "The contention may be sound that the Administrator lacked authority to maintain an action for restitution because the statute having created a right (a liability) and having given a special remedy for its enforcement, that remedy is exclusive; but, if such contention be

correct, it shows only that the court erred in rendering the decree and in finding at that time that the remedy given the employees is not exclusive. The error pertained only to the capacity of the plaintiff and to the remedy, not to the power of the court. Whether the administrator 'has the requisite standing' to maintain a suit for restitution 'is a question going to the merits', and the decree is not subject to attack for such an error by motion to vacate. General Inv. Co. v. New York Central R. R. supra. The right of the administrator to make such an attack was waived by the defendants. The inherent power of the court to enter the order appealed from is not involved. It was error to sustain the motion."

See also the opinion of the Circuit Court of Appeals for the Second Circuit in *Decorative Stone Co.* v. *Building Trades Council*, 23 Fed. (2d) 426, certiorari denied, 277 U. S. 594, an action under the Clayton Act (15 U. S. C. A. Par. 26) for injunction and treble damages for past violations. The Court held that the right to equitable relief against threatened loss under Section 16 of the Act could not be interpreted broadly enough to authorize the Court, as incidental to injunctive relief, to award treble damages for past violations of the anti-trust laws and answered plaintiff's contention that if the statutory damages might not be recovered in that suit, he should be allowed to recover compensatory damages under the common law principle that where a statute makes certain conduct unlawful, a person who is of the class intended to be protected, and who has sustained special damages from a violation of that statute, may maintain an action therefor, by saying at page 428:

"But it is an equally well recognized principle that where, as here, a statute created a right and prescribes a remedy, the statutory remedy is exclusive. Globe Newspaper Co. v. Walker, 210 U. S. 356, 28 S. Ct. 726, 52 L. Ed. 1096; Pollard v. Bailey, 20 Wall. 520, 22 L. Ed. 376; Yates v. Jones Nat. Bank, 206 U. S. 158, 179, 27 S. Ct. 638, 51 L. Ed. 1002. The citation of Pollard v.

Bailey in the Fleitmann Case indicates that this doctrine was there thought to be applicable to Section 7 of the Sherman Act (15 USCA Sec. 4), in providing that an injunction at the suit of government officials, impliedly negatived the right of a private person to obtain injunctive relief. By parity of reasoning, we think the remedy which the act gave for damages was also exclusive. See Wilder Mfg. Co. v. Corn Products Co., 236 U. S. 165, 174, 35 S. Ct. 398, 59 L. Ed. 520, Ann. Cas. 1916A, 181. We are of opinion, therefore, that the complainant's only right to damages was the statutory right, and that, for reasons already given, this right is not enforceable in the District Court as an incident to injunctive relief."

Petitioner also places great reliance on *Parker* v. *U. S.*, 153 Fed. (2d) 66. That was a proceeding under the Agricultural Adjustment Act (7 U. S. C. A. 601, etc.) which is very broad in its grant of powers to the Secretary of Agriculture. Section 608(a) (6) of that Act gives the District Courts jurisdiction to enforce, prevent or restrain any person from violating any order, regulation or agreement pursuant to the Act and specifically provides in Sub-paragraph (8) that the remedies enumerated in that Section shall be in addition to and not exclusive of any of the remedies or penalties provided for elsewhere in that chapter or now or hereafter existing at law or in equity. This is a much broader and more specific grant of jurisdiction than that contained in the Fair Labor Standards Act. Furthermore that case points out that the remedy is "to compensate complainant for loss caused by respondent's disobedience of such a decree."

3. The Award of a Compensatory Fine in Civil Contempt Proceedings is Not Mandatory.

In 43 C. J. S., Title Injunction, page 1048, it is pointed out that the Court granting an injunction is clothed with a large discretion in enforcing obedience to it and in a proceeding for its violation, the extent of the punishment

to be inflicted, rests in the sound legal discretion of the Court. Cases from Illinois, Indiana and a number of other states are cited in support of that text. See also, *Bowles* v. *Skaggs, Creedon* v. *Randolph* and *Porter* v. *Warner Holding Co., supra.*

In *Hecht Company* v. *Bowles*, 321 U. S. 321, 88 L. Ed. 754 the Price Administrator contended that he was entitled as of right to an injunction upon a showing that the defendant had engaged or was about to engage in practices violative of the Price Control Act, relying upon the words of the statute that upon a showing of violation, an injunction "shall be granted". Mr. Justice Douglas, speaking for the Court in that case, however, found that such was not the Congressional intent and said:

> "A grant of jurisdiction to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances. We cannot but think that if Congress had intended to make such a drastic departure from the traditions of equity practice, an unequivocal statement of its purpose would have been made."

It must be assumed that Congress would have used unequivocal language in the Fair Labor Standards Act if its purpose had been to make it mandatory upon the District Courts to award restitution in injunction proceedings at the suit of the Administrator, upon the finding that violations of the wage and hour provisions existed, just as this Court found that unequivocal language would have been required in the Price Control Act to make the granting of an injunction mandatory upon the finding of violation. Instead of this, the right of action to recover wages due was expressly limited to employees affected.

Some of the cases relied upon by the Petitioner in support of his contention have just the contrary effect. For instance, in *Rodgers* v. *Pitt*, 89 Fed. 424, the Court found that there was a violation of the injunction, but that the same was not willful, and said at page 430:

> "As regards the rights of persons affected by an injunction, the fact that defendant has violated the mandate of the court under the advice of counsel constitutes no sufficient ground of defense in his favor. We have already seen that the motive with which the breach is committed constitutes no excuse for the wrongful act, and equity will protect persons affected by the writ from any violations of its terms, even though committed under the sanction and advice of counsel. * * * It is to be observed, however, that, while the fact of defendant having committed the breach under the advice of counsel * * * affords no justification for his conduct, yet, if such advice be given in good faith, it may properly be taken into account in determining the degree of punishment to be inflicted for the breach, and may thus palliate, although it cannot justify, the violation."

Likewise, in *Lustgarten* v. *Felt & Tarrant Mfg. Co.*, 92 Fed. (2d) 277, the Court said at page 280,

> "That appellants may have deemed that they were in no wise violating the injunction and were acting in good faith may be taken into consideration in mitigation of their offense."

Another case cited by the Petitioner is *Freeman* v. *Premier Machine Co.*, 25 F. Supp. 927. That was a contempt proceeding growing out of the violation of an injunction in a patent infringement case, in which plaintiff sought to recover by way of a compensatory fine expenses in excess of $1,000.00 incurred by him in the contempt proceeding. The Court found, however, that the defendant was acting in good faith and, therefore, refused to impose a penalty in excess of $100.00.

The case of *McComb* v. *Scerbo & Son*, 8 W. H. Cases, 304, 16 L. C. 64,771 in the District Court for the Southern District of New York also is relied upon by the Petitioner. In that case the defendants consented to the entry of an injunction, but contended that the Court was without authority to direct the payment of back wages. The Court did

grant such relief, not, however, as a mandatory duty but in the exercise of his "discretion under the circumstances of this particular case".

Furthermore, the Court relied for his decision, among others, on the case of *Walling* v. *O'Grady*, 146 Fed. (2d) 422 also cited by the Petitioner. That case can be distinguished from an action involving payment of back wages under Sections 6 and 7 of the Act, for the Act is silent concerning the remedy of an employee who is discharged in violation of the provisions of Section 15(a) (3), neither does it provide for the payment of a penalty in double the amount due and attorneys fees, as does Section 16(b), whereas the remedy given to employees by Section 16(b) relates only to the recovery of amounts due for violation of the provisions of Sections 6 and 7. In view of the double penalty and attorneys fees provision of Section 16 (b), the reason given in the O'Grady case for the exercise of its jurisdiction i.e. that "the amount involved ordinarily would be small and the expenses of recovery disproportionate", does not apply to actions instituted under Section 16 (b). Again the Court, while referred to its former decision in *Decorative Stone Co.* v. *Building Trades Council, supra*, did not overrule it and it is still the applicable law under facts such as are presented in the instant case.

The District Court also referred to the concurring opinion of Judge Woodrough in *Walling* v. *Miller, supra* and to the opinion of the District Court for Connecticut in *Walling* v. *Alderman*, 51 Fed. Supp. 800. Judge Woodrough's language did not express the views of the majority of the Court, as we have already pointed out and at any rate, it is mere dictum, as the question he discussed was not before the Court for decision. The opinion of the District Court in the Alderman case shows that it is based on a consent decree entered pursuant to a stipulation agreeing to the payment of back wages and contempt proceedings for failure to comply with the decree. At

that stage, defendants moved to vacate so much of the judgment as required restitution, on the ground that the Court lacked jurisdiction. The Court did not agree with that contention, held that it did have jurisdiction and that the defendants, having consented to the entry of the decree were not in a position to complain. We respectfully submit that *McComb* v. *Scerbo & Son, supra,* was wrongly decided but at any rate, it is not authority for the proposition that there is a mandatory duty on the Court to enter an order of restitution.

That appears to be the first case in which the Administrator sought to compel restitution in connection with a contested injunction proceeding. In view of the hundreds of cases instituted, that alone is significant and indicates that the Administrator is hopeful that the Courts will, by judicial legislation, give him an authority which he has assiduously sought from Congress for many years, but which Congress did not see fit to bestow. It is also interesting that Counsel for the Administrator took an entirely different view of the matter in his brief on the first appeal to the Circuit Court of Appeals in the instant case for they then disclaimed the very thing they now seek to compel the Court to decree.[3]

All of the other cases relied upon by the Administrator and cited at page 44 of his brief, involve consent decrees and hence cannot be considered as authority that the Court must as a matter of course decree the payment of back wages at the behest of the Administrator, either

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[3] Brief for Administrator-Appellant, page 49, "The Administrator's duty is not the vindication of private rights . . . he seeks no private award operating by way of penalty, etc." And at page 60, "In the event that a violation is charged and there is a dispute about the matter, no penalty can attach until after full hearing the trial court decides that specific conduct is in clear contempt of its decree. The decree below, therefore, plainly does not expose defendant to punishment based upon trifling or unintended violations of the Act."

in the granting of an original injunction or in contempt proceedings based thereon.

Walling v. *Miller*, 138 Fed. (2d) 629.

4. The Principle That Equity Will Afford Complete Relief Not Applicable Here.

In *Pomeroy's Equity Jurisprudence*, 4th Edition, Paragraph 237, it is said that courts of equity, having obtained jurisdiction for the purpose of awarding special relief by way of injunction which in many instances is not complete, will retain the cause and decree full and final relief including damages, and quotes from the opinion of Lord Hardwicke in *Jesus College* v. *Bloom*, 3 Atl. 262, as follows:

> "So in bills for an injunction, the Court will make a complete decree, and give the party a satisfaction, and not oblige him to bring an action at law as well as a bill here".

That reason, however, would not apply here, for any decree which the Court might enter for payment of back wages would still leave the employees free to sue for the liquidated damages provided in Section 16 (b).

Schulte v. *Gangi*, 328 U. S. 108, 90 L. Ed. 1114.

This possible consequence was pointed out by the Circuit Court of Appeals in this opinion (2nd R. 1125). It was not present in *Creedon* v. *Randolph*, *supra*, because there the action on part of the tenant was already barred by the statute of limitations. In Volume 1, page 409 of *Pomeroy*, that noted authority on equity jurisprudence, dealing with the avoidance of multiplicity of suits, says:

> "The equity must result in the simplification or consolidation of the issues. If after the numerous parties are joined, there still remains separate issues to be tried between each of them and the single plaintiff or defendant, nothing has been gained by the Court.

of equity assuming jurisdiction. In such case 'while the proceeding has only one number on the docket and calls itself a single proceeding, it is really a bundle of separate suits, each of which is no doubt similar in character to the others, but rests nevertheless upon separate and distinct liabilities of one defendant'."

That would be the situation here, for while the Court has decided that certain practices are in violation of the Act, yet in the application of the principle to specific employees and bearing in mind that each work-week must be treated as a unit and that the activities of the employee during that particular work-week are the criterion of coverage, we come to serious practical difficulties in determining the amount due to the individual employees, in many instances. It must be borne in mind that we are not dealing here with a large manufacturing plant or similar establishment employing numerous employees under exactly similar conditions, but a number of separate wholesale houses, some large, some small, in the latter of which particularly the conditions vary from week to week. For instance, at the St. Petersburg branch, which sells only to customers in the State of Florida and has no railroad siding (2nd R. 623) freight from out of the State is received by rail in split-car shipments only two or three times per month (2nd R. 624) and only two out of state shipments by truck were received in the course of six months (2nd R. 625). At Orlando, which likewise sells only in the State, pool cars are received only 7 to 10 times per year and take from one to three hours to unload (2nd R. 749-50) and less than carload shipments are received up to three times in some weeks, then none for several weeks (2nd R. 751). The same condition applies in Lakeland (2nd R. 828). It cannot be said, therefore, that the employees unloading such shipments and placing them in stock were covered each and every week, hence a detailed inquiry would be necessary to determine the amounts due them. It seems that rather than facilitating the enforce-

ment of the Act by the Administrator, the contrary would be the case if all of these matters had to be litigated in the injunction proceedings, for in order to make a valid decree, the Court would have to take testimony concerning the exact amount of wages due to each of possibly hundreds of employees, rather than passing upon the legality or illegality of the challenged practices as such and letting the question of liability to the individual employees be determined in separate proceedings brought by them, in which the question of individual liability can be determined under applicable procedure, including trial by jury on disputed questions of fact.

It does not appeaf, therefore, that the principle of avoidance of multiplicity of suits will apply in a situation such as this, for instead of disposing of the entire litigation, it would be productive of additional suits by employees to recover the statutory penalty. If the Court should attempt to bring in all the employees as parties to the suit, as suggested in the Warner Holding Company case, supra, then we run afoul of the present statutory requirement that a suit on behalf of the employees may only be maintained with their consent in writing and surely a court of equity will not go to such lengths under the guise of doing complete justice in an injunction proceeding.

As counsel for Petitioner himself recognizes in his brief that in civil contempt proceedings good faith may be considered in determining the penalty, which here is sought by way of a compensatory fine, we do not further discuss the cases in detail, except to point out that *Penfield Co. v. Securities & Exchange Comm.*, 330 U. S. 593, dealt with an entirely different situation. There the Securities & Exchange Commission was charged with the duty of inspecting books and records which the defendant refused to produce. The Court, instead of compelling production of these records, imposed a small fine and left the Commission in a position where it could not carry out its statutory duty of inspection. Here no duty is imposed upon the

Administrator to collect back wages. He produced no evidence that he had been damaged, but sought to accomplish in the guise of a compensatory fine the very thing Congress had denied to give him. As stated by the Fifth Circuit Court of Appeals in *Walling* v. *Crane*, 158 Fed. (2d) 80, at page 85,

> "But even if he were authorized to sue for wages due employees, and in that capacity had secured a specific judgment for the amount of the wages due, he could not then maintain contempt proceedings for the avowed purpose of using the punitive powers of such a proceeding to collect the judgment through the device of 'a compensatory fine in an amount equal to the underpayments', which, stripped of its nomenclature and viewed in the light of reality, would show up simply as the imposition of punishment in an attempt to collect a debt."

A number of cases are cited on page 19 of Petitioner's brief to the effect that proof of intentional defiance is not required in civil contempt. However, he states at page 20 "While it '*may affect the extent of the penalty*' to be imposed for contempt, the absence of wilfulness does 'not relieve from liability for a civil contempt'." (Italics supplied). That is the theory under which the Court here acted. It found no contempt to exist because the Respondents were entitled to a judicial determination of the legality of the practices complained of in this proceeding and the original injunction "may not be used as a catch penny contrivance to snare the ignorant, the unsuspecting and unwary".

Nasif v. *U. S.*, 165 Fed. 119

Regal Knitwear Co. v. *Labor Board*, 324 U. S. 9, 15.

Furthermore, such damages when awarded must not exceed the actual loss to *the complainant* and must be based upon evidence of *complainant's* actual loss.

Parker v. *U. S.*, 153 Fed. (2d) 66

In *U. S. v. United Mine Workers*, 330 U. S. 258, at page 304, this Court said:

> "Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order *and to compensate the complainant* for losses sustained. Gompers v. Bucks, Stove & Range Co., supra (221 US.448, 449, 55 L. Ed. 808, 809, 31 S. Ct. 492, 34 LRA (NS) 874). Where compensation is extended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's *actual loss*, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.
>
> But where the purpose is to make the defendant comply, *the court's discretion* is otherwise exercised. It must then consider the character and magnitude of the harm threatened by the continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired." (Italics supplied.)

Here the primary purpose of the proceeding was to enforce compliance, not to seek compensation for third parties.

The argument is made that payment of back wages should be ordered not only in the public interest but to remove what amounts to a discrimination against complying competitors. A like contention was presented in the original proceeding but was disposed of by this Court in

Walling v. *Jacksonville Paper Co.*, 317 U. S. 564

at page 570, where Mr. Justice Douglas, speaking for the Court, said:

> "We may assume the validity of the argument that since wholesalers doing a local business are in competition with wholesalers doing an interstate business, the latter would be prejudiced if their competitors were not required to comply with the same labor standards. That consideration, however, would be pertinent only

> if the Act extended to businesses or transactions 'affecting commerce'. But as we noted in the Kirschbaum case the Act did not go so far."

Again and again Petitioner says that the practices complained of in the contempt proceedings were exactly the same sort of illegal practice as had been charged at the original trial. We have already pointed out that such was not the case except in the very broadest sense and that both the District Court and the Circuit Court of Appeals so found. The alleged violations complained of by the Administrator in the contempt proceedings come in the same category as those discussed by Mr. Justice Reed in

Bay Ridge Operating Co. v. *Aaron*, 92 L. Ed. 1146

where he said,

> "These cases present another aspect of the perplexing problem of what constitutes the regular rate of pay which the Fair Labor Standards Act requires to be used in computing the proper payment for work in excess of 40 hours."

This reiteration, therefore, should not require further comment but we wish to point out with reference to the statement at page 22 of Petitioner's brief that Respondents were still underpaying piece workers, that this refers to men employed in the Coat Hanger Department of Southern Industries Company, one of whom was in complete charge of the department and operated the day shift, whom respondents considered exempt as an executive employee, and one other employee, although changed from time to time (2nd R. 241, 246). Furthermore, (1st R. 199) Inspector Thomas was asked whether shortly after his conference with Mr. McGehee, piece workers were not placed under the Wage and Hour Act and he replied, "I am told that happened, Sir". At (1st R. 539) there was a proffer of proof that shortly after October 24, 1938 and long prior to the filing of the first proceeding on July 8, 1940, the persons in

charge of the company placed the plant on a 44 hour basis, installed a time clock and otherwise attempted to comply with the minimum wage and maximum hour provision of the Act, which proffer of proof was rejected by the Court as not being pertinent under his rulings that an injunction would issue if violations had existed prior to the filing of the suit.

On page 27 of his brief, Petitioner also says that the Respondents did not keep the prescribed records, referring to the opinion of the District Court which found (2nd R. 1009) that the Administrator's complaint on that score grew out of the fact that the local manager of Jacksonville Paper Company in some instances allowed employees time off without loss of compensation and to later make up such loss of time by working short periods of overtime which practice had been discontinued when the Administrator complained of it. The Court did not even find it necessary to take any action with reference to that complaint.

Neither does the record justify the statement on page 32 of the brief of Petitioner that the violations involved in these contempt proceedings were exactly the same sort of illegal practices charged in the original trial. Exactly the contrary is the fact, as found by the District Court (2nd R. 1010).

The complaint in that proceeding was in the most general terms and simply charged that the defendants paid to many of their respective employees less than the minimum wages (1st R. 5), and that the defendants paid "certain of their respective employees who were engaged in interstate commerce" less than one and one-half times the regular rate for hours worked in excess of the statutory maximum (1st R. 6). There was also a charge in the same general terms of violation of the record keeping requirements and "hot goods" provisions of the Act (1st R. 8).

It will be seen, therefore, that there was nothing in the complaint which would give the defendant notice of specific violations. The testimony was voluminous and covered

a wide range so that here again no specific acts constituting violation were brought home to the defendants: The reason for this, no doubt, was that the Administrator at that time was confident that the Court would hold the receipt of extra-state goods to be sufficient predicate for coverage: certainly that was the theory upon which the case was tried. The Administrator being fully aware of all of the facts brought out at the first trial, defendants could reasonably conclude that he would specifically enjoin all practices which he then claimed to be in violation of the Act for as stated by District Judge Underwood in *McComb* v. *Crane*, 14 Labor Cases, 64,257:.

> "An injunctional order should be as explicit as the case permits (Cleveland Trust Co. v. Schriber-Schroth Co., C. C. A. 6, 108 Fed. (2d) 109, 115), and should point 'out with definiteness what is to be done or not done'. (Borren v. El Paso National Bank, C. C. A. 5, 133 F. (2d) 698, 703."

If placed in a dilemma by an ambiguous order, one who acts in good faith and with due respect to the Court is not guilty of contempt.

> *National Labor Relations Board* v. *Bell Oil & Gas Co.* C. C. A. 5, 98 Fed. (2d) 405

The statement is made at page 43 of Petitioner's brief that it has been the usual practice of the Courts throughout the Country to order restitution for violation of injunctions in civil contempt actions under the Fair Labor Standards Act and that no question as to the propriety of this practice has been raised outside the Fifth Circuit, but it appears that all of the cases cited involved consent decrees, hence they are entitled to but little weight and certainly can not be taken as an adjudication that the Court must in every instance and without exercise of judicial discretion order payment of back wages in such proceedings. As a matter

of fact, in a very substantial number of instances, the Administrator has not been able to secure such consents.[4]

There is another reason why back pay should not be awarded in this proceeding, i. e., that the Circuit Court of Appeals should not have affirmed the District Court in at least some of its findings. For instance, the District Court found that the annual bonus based on a percentage of the total compensation for the prior year should be taken into consideration in determining the regular rate of pay, (2nd R. 1002), that bonus is clearly distinguishable from the plans held by this Court to be a part of the regular rate of pay in

Walling v. *Youngerman Reynolds Hardware Co.*, 325 U. S. 418, 89 L. Ed. 1705

Walling v. *Harnishfeger Corp.*, 325 U. S. 427, 89 L. Ed. 1711

and similar cases as is clearly pointed out by the Circuit Court of Appeals in

DeWaters v. *Macklin Co.*, 167 Fed. (2d) 694.

There the employer adopted what was denominated a "production savings plan" as an inducement to more efficient operation. The Court distinguished the Youngerman Reynolds and other cases above referred to and said, at page 698:

> "The profits to be so shared were the combined results of the efficient efforts of all employees, all departments, and the management. No individual employee received his additional compensation on the basis of what he individually did, or on the basis of his individual piece rate production. One individual em-

[4] See his Annual Report for the year 1946, page 20, where it appears that whereas $13,400,000.00 was agreed or ordered to be paid $8,200,000.00 was due from employers who refused to make restitution.

> ployee, or even a group of employees, might be less efficient than normally in one particular month, yet due to increased efficiency of other employees, or other departments, or on the part of the management, or by the reason of the installation of improved machinery, the total result for that month might show a production savings fund available for distribution.

Here likewise the Board of Directors annually authorizes payment of a bonus, not on the individual industry of the employees, but rather based on the prosperity of the company as a whole. To now designate this as an addition to the regular rate of pay is not only inconsistent with the intent of the parties, but would, in effect, constitute a violation of the wage stabilization program in effect during much of this time, which forbade increases in compensation without the approval of the Wage Stabilization Unit of the Wage and Hour Division.

Another incident in which we feel that the District Court reached an erroneous conclusion is with reference to the two superintendents of Southern Industries Company, i. e., Cantrell and Klehm. Each are in charge of a department of Southern Industries Company (2nd R. 267-277). Klehm received $65.00 per week, Cantrell $55.00 per week, plus an overriding bonus on the number of tablets manufactured. The departments are separate (2nd R. 270) and their work requires a high degree of skill. W. O. Mathias, in charge of the coat hanger department, likewise is in charge of a separate department (2nd R. 242) and all of these men have authority to hire and fire. Their duties cannot be distinguished from the duties of the engineers in charge of the powerhouse in *Walling* v. *General Industries Co.* 330 U. S. 545, 91 L. Ed. 799, and the Circuit Court of Appeals indicated that such would have been its finding (2nd R. 1123).

Under these circumstances it would be particularly inequitable to reverse the exercise of discretion of the District Court and direct the entry of an order awarding restitution merely because the Respondents concluded not to ap-

ply for certiorari and when the Administrator filed his Petition two days before the time expired, it was then too late for the Respondents to file Cross-Petition, as their Motion for Extension of Time was denied by this Court.

Respectfully submitted,

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